

MAINE ETHICS COMMISSION

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IN THE MATTER OF:

MAINE HERITAGE POLICY CENTER

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December 20, 2006

HELD AT: County of Kennebec
State of Maine

BEFORE: HONORABLE ANDREW KETTERER, Chair
HONORABLE VINTON CASSIDY
HONORABLE MICHAEL FRIEDMAN
HONORABLE A. MAVOURNEEN THOMPSON

COMMISSION STAFF: JONATHAN WAYNE, Executive Director
PHYLLIS GARDINER, ESQ.

APPEARANCES: WILLIAM BECKER
DANIEL BILLINGS, ESQ.
JOHN BRANSON, ESQ.
JONATHAN CRASNICK
CARL LINDEMANN
CHRISTOPHER "KIT" ST. JOHN

TRANSCRIBER: LAURA L. SPRINGATE

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RE</u> <u>DIRECT</u>	<u>RE</u> <u>CROSS</u>	<u>V.</u> <u>D.</u>	<u>J</u>
C. Lindemann	14					
J. Branson	50					
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E X H I B I T S

<u>PETITIONER</u>	<u>DESCRIPTION</u>	<u>For</u> <u>I.D.</u>	<u>In</u> <u>Ev.</u>
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<u>RESPONDENT</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>
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MR. ANDREW KETTERER: Commission on Governmental Ethics and Election Practices. This is a specially assigned, uh, hearing date, uh, in connection with, um, uh... a claim made against the, uh, Maine Heritage, uh, Foundation, uh, Heritage Policy Center brought by Carl, uh, Lindemann. And, uh, we don't have any other matters on our agenda for today. Uh, as some of you know who've been here before, uh, we started to look at this issue and it seemed to get pushed out by other matters that had to, uh, be taken up and so we decided, uh, in part as a result of request of counsel to specially assign it on a day when it would not be competing with anything else. And I think that was probably, uh, a good idea. And, uh, so we're here today to hear that matter. Uh, and we have, uh, four Commissioners present, uh, for our hearing and, uh, we're on the record, um. And, um, I think the, uh, first thing to do is for the Commission members to decide, uh, how we're going to proceed. There's been some correspondence regarding, uh, whether or

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2 not testimony would be sworn or not and um,
3 uh, Mr. uh, Billings has raised an objection
4 to swearing in of witnesses in his detailed,
5 uh, was it an e-mail letter? I think it was
6 an e-mail letter that came to staff and then
7 was forwarded on to us by e-mail. Um, and
8 uh, so basically, uh, what I'd like to know
9 from my co-Commissioners, this is not
10 anything that has been discussed an advance,
11 um... is what their view of it is. I will just
12 tell you, uh, as one of the longer serving
13 members of the Commission, um, that our past
14 practice has been, uh, basically if we are,
15 uh, finding facts or conducting some kind of
16 an inquiry, we have not taken sworn testimony
17 generally. And there have been certain
18 notable exceptions to that that I can think
19 of. Um, the most recent was when we had the
20 matters, uh, from the Lewiston-Auburn area
21 involving, um, uh, alleged misuse of, uh,
22 public finance candidate money. Um, and the
23 feeling was that we were having an
24 adjudicatory hearing that required sworn
25 testimony. And uh, we swore in each witness

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2 and everything but that was really out of the
3 ordinary. Our past practice has been, um,
4 basically ask people questions. If we feel
5 like we're not getting the complete answers
6 we may sort of drill down deeper. We may ask
7 staff to check on things. Uh, we have asked
8 for the production of documents which would
9 tend to substantiate or not substantiate what
10 the oral testimony has been. And that system
11 has worked pretty well. Um, I'd be open to
12 hearing from my Commissioners, any thoughts
13 they might have about it. I'd like to-the
14 comment was attributed to you that you
15 thought sworn testimony might be in order.
16 And if might well be. I think it creates
17 other problems and it seems to me it's
18 somewhat inconsistent with our past practice.
19 But, uh, but if you have some thoughts on it
20 maybe you should let us know. I think
21 primarily we need to decide that because
22 based on Dan's letter I think we head in that
23 direction and we sort of continue the matter
24 and head, you know, [unintelligible] probably
25 not here today, so preliminarily we should

hear that issue—decide that issue.

MR. MICHAEL FRIEDMEN: Well after the last hearing I was somewhat concerned by [Coughing] the tone that I perceived of... the parties to this matter. And rather than permit a lot of histrionics my—my view was that at least with sworn testimony it would keep people focused. It would keep the debate in line. And uh, hopefully, you would get... more fact than you would speculation, opinion or any other kind of... testimony that we often get here. However, having said that, um, this has been on the agenda two or three times. I certainly would not want to, uh... have a procedural issue stop the hearing now that we have four Commissioners here. And it seems to me that if we do not get the information today, or that the information we get today leads us to conclude that a more in depth hearing is necessary, we can then proceed on the basis of a more adjudicatory process. But for today, I'm willing to rely on the way we've always done business.

HON. KETTERER: Mavourneen you have

anything to say?

MS. A. MAVOURNEEN THOMPSON: Yeah. I also was present when Mike suggested we have sworn testimony today and I indicated at that time informally to Jonathan that I thought sure, let's have sworn testimony just because sworn testimony, I-I understand ensures that what we're hearing is factual and honest. Uh, I would also hope that everything we hear without sworn testimony is factual and honest but, um, nevertheless, that might be in a perfect world. So-so my sense is that, um, we should have all information before us that is factual and honest and if we need sworn testimony to ensure that that we should ask if we can get sworn testimony today from both parties, if they agree, then I understand we can go forward with sworn testimony. If both parties do not agree on giving sworn testimony today, I'm understanding that we would have to go through a, um, a structured procedure in order to elicit sworn testimony at a coming hearing. Is that correct? So--

HON. KETTERER: [unintelligible].

MS. THOMPSON: So I would suggest asking both parties if they will offer sworn testimony today so that we can get right to the bottom of this and more forward.

HON. KETTERER: Okay. Well we already know from Dan Billing's side it from his e-mail communication that that's off limits as far as he's concerned. So I think we have that answer already. Uh, you have any thoughts it Vinton?

MR. VINTON CASSIDY: Uh, yeah. Honestly I was--was [unintelligible] personal but--I know, listening to the three of you in here and I sort of kind of like Mike's ideas since--so I'd like to see us proceed with the thing and the issues and hopefully I would assume we're going to hear some honest testimony. I--you know, I have faith that we will but if for some reason later down the road we have [unintelligible] go through some other procedure than that, then that would be what we have to decide, I think we [unintelligible] go, [inaudible] testimony.

HON. KETTERER: Well let me just inquire

1
2 of... uh, Mr. Billings, am I correct that
3 your position hasn't changed since you wrote
4 the letter?

5 MR. DANIEL BILLINGS: That's right.

6 HON. KETTERER: Thank you. So, that's
7 where we are and, um, so in light of that
8 fact, um, and I think it's consistent with
9 past practice, um, you know, I don't want to
10 create the impression that because Dan
11 Billings says I don't want to do it that way,
12 that's the reason we're not doing it that
13 way. I mean because other good and
14 sufficient reasons to proceed with the way
15 the original agreement has suggested which
16 is, uh, most of the time we ask people to
17 come forward, bring some documents, sometimes
18 they submit stuff on their own. They
19 frequently bring a lot more than four or five
20 points and anything else and we review it, we
21 take a look at it and we make decisions.
22 It's very rare that we have people under
23 oath. But there are times when it's clearly
24 called for and I-I think right at the moment
25 we're not at a point where we know whether

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2 this is one of those times or not. And we're
3 not required to do everything in one session.
4 We sometimes takes things and take part of
5 the testimony and then on a different day,
6 sometimes it's a month later, take more
7 testimony and we get—the record is open and
8 people submit documents afterwards. But then
9 sometimes we say okay, well that's it, we
10 made a determination and we'll have a
11 different day to disclose—decide what the
12 decision was. So it isn't—we're not required
13 to finish this today. We're required to do a
14 good and credible job, and treat people
15 fairly and give them respect and listen to
16 their claims and the response to the claims
17 of others. I think that's our primary
18 responsibility and if we get to the point
19 where we feel like there are vast
20 inconsistencies in the testimony that we're
21 receiving, um, someone is either shaving
22 their testimony or not telling the truth, um,
23 I'd like to hear this under oath. I think at
24 that point we reconvene, we issue the formal
25 subpoenas that we need and it would be

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2 appropriate notice so they can raise any
3 objections that they want. And we'll take
4 the testimony and receive the documents and
5 make a decision. So that would proceed in
6 that fashion.

7 MR. JOHN BRANSON: Can we be heard?

8 HON. KETTERER: Having said that. I'm
9 sorry. Is somebody speaking?

10 MR. BRANSON: Can we be heard on that?

11 HON. KETTERER: Not right now. Um.

12 MR. BRANSON: Is it possible for the
13 Commission to vote on it? Uh, or do the, uh,
14 Commissioners take care of [unintelligible].

15 HON. KETTERER: Um, I think it's a
16 little bit of both. I think I've stated what
17 my position is. And I think the
18 Commissioners have stated their positions on
19 the record. Uh, and, um, uh, let me just ask
20 this—it's not a formal vote. Does anybody
21 have any objections to proceeding in that
22 fashion under the circumstances we find
23 ourselves in today?

24 MR. FRIEDMAN: No.

25 HON. KETTERER: Uh, so, uh, at this

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2 point we'll turn to, um, uh, counsel, I guess
3 to you, if you want to come up and either, I
4 don't know if you want to present Mr.
5 Lindemann—or you want to make some opening
6 remarks yourself or... how'd you like to
7 structure that and, uh, go, I guess, that's
8 the microphone right there, so... Um, welcome
9 and uh, would you kindly—we know who you are
10 but state your name, uh, for our record,
11 please.

12 MR. CARL LINDEMANN: Sure. My name is
13 Carl Lindemann.

14 MR. BRANSON: Uh, my name is John
15 Branson. Counsel for Mr. Lindemann.

16 HON. KETTERER: Okay. Counsel and how
17 would you like to proceed?

18 MR. BRANSON: Well as a preliminary
19 matter, I guess we would like to ask if the,
20 uh, Commissioners and the staff have
21 discussed, uh, how we might allocate time
22 today. We've, uh, just want you to know,
23 Carl and I would each like to make a
24 presentation to the, uh, to the Commission.
25 Um, each of our presentations, I think is

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2 approximately 20 minutes or so. And uh, I
3 just want to make sure before we got into
4 that, that--that we would have 40 minutes or
5 so between the both of us to make the
6 presentation--

7 HON. KETTERER: [Interposing] Sure and
8 let me ask you this counsel. Do you
9 reasonably anticipate people other than the
10 two of you who would be giving testimony?

11 MR. BRANSON: Uh, yes. Well we
12 understand, uh, uh, the, uh, executive
13 director of Democracy Maine, uh, intends to
14 uh, make a statement--

15 HON. KETTERER: [Interposing] Okay.

16 MR. BRANSON: --Mr. Crasnick. And Kit
17 Guard [phonetic] is here as well, I know.
18 Kit St. John, I'm sorry.

19 HON. KETTERER: That's all right. We
20 had his name. It's all right.

21 MR. BRANSON: Yeah. Uh, is here as well
22 and he's prepared to make, uh, a statement.
23 Um... apart from that I-I really don't know.
24 Uh... but those groups are formally affiliated
25 with us--

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HON. KETTERER: [Interposing] Right.

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MR. BRANSON: --they have--they have an interest--

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HON. KETTERER: [Interposing] Sure.

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MR. BRANSON: --in this matter.

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HON. KETTERER: All right. So. Let me make sure I understand your--counsel. So the request is that each of the two of you get 20 minutes?

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MR. BRANSON: Yes.

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HON. KETTERER: Yeah. I don't think that's a problem. I mean when it's the complainant and counsel, I--I think that's a reasonable request. That'll be fine. And--and whoever wants to go first can go ahead.

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MR. BRANSON: Mr. Lindemann will go first.

19

HON. KETTERER: Okay great.

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MR. LINDEMANN: Okay. Very good. I have three parts to my presentation. First to give some background, I hadn't thought to--first I want to very much thank, uh, Commissioner Cassidy for making the trip. I've, uh, uh, I feel like I'm the Flying

1
2 Dutchman of Route 9 over the past few weeks,
3 and that, uh, I know that the road from
4 Bangor, uh, over to Calais very, very well.
5 And, uh, I appreciate your making the trip
6 here.

7 MR. CASSIDY: Just, uh, to tell you,
8 too, I may get up and walk around a bit and
9 it's not because I'm not interested, but, uh,
10 my arthritis, I have to do that, so I'll be
11 listening [Coughing]. I may be too.

12 MR. LINDEMANN: In any case, uh, uh, uh,
13 just in the, uh, in the December 4th, uh,
14 response from the Maine Policy Heritage
15 Center, there were some statements made, uh,
16 that I feel that, uh, uh, the Commission
17 should hear the back story. The
18 [unintelligible] on here, what brought them
19 here, uh, what this is about in terms of the
20 history. And they made some reference to it.
21 And I'll just read those, uh, from the
22 section, uh, page 6, allegations contained in
23 Carl Lindemann's November 27th letter.
24 Second paragraph.

25 MS. THOMPSON: Would you wait until we

1
2 get that, for--where exactly are the documents
3 now?

4 MR. LINDEMANN: Uh, this is Mr.
5 Billing's, uh, response on December 4th.

6 HON. KETTERER: I may have a copy--

7 MS. THOMPSON: I don't want to be
8 searching for it--

9 HON. KETTERER: [Interposing] That's--

10 MS. THOMPSON: --I want to have it
11 before us.

12 ANDREW KETTERER: Search no more my
13 friend, here you go.

14 MS. THOMPSON: Thank you. Now--

15 MR. LINDEMANN: [Interposing] Seek and
16 you shall find. So, second paragraph, uh,
17 Mr. Lindemann's complaint to the Commission
18 are just one part of his long running
19 campaign against the Maine Heritage Policy
20 Center. Previously he had filed complaints
21 again MHPC with the Internal Revenue Service
22 which were dismissed. Complaints dismissed.
23 A little farther down, a good faith
24 disagreement, the meaning of the law, should
25 not result in such personal attacks as part

1 of a proceeding before the regulatory board.
2 And that's on December 4th several days
3 before on two public sessions, one on WGAN,
4 and uh, the other on WLOB in Portland, uh,
5 Mr. Becker made several statements. Again
6 this is on 11/30 so before Mr. Billings made
7 this statement about the, uh, what is it, a
8 good faith disagreement, civility, etcetera.
9 Uh, let's see. You look at the WGAN
10 interview, uh, Mr. Becker says Mr. Lindemann
11 has been after the Maine Heritage Policy
12 Center since at least 2004 when he filed
13 complaints with the IRS about, uh, what we
14 are up to. And the IRS basically sent me an
15 apology letter last spring saying sorry for
16 any inconvenience. Obviously we're doing
17 everything by the book. So this has been a
18 long standing issue with Mr. Lindemann going
19 after organizations like ours, which attach
20 free market to conservative public policies.
21 Then again on the same morning on WLOB Mr.
22 Becker again said the only think he had to
23 understand is the complaint. This guy by the
24 name of Carl Lindemann who isn't even a
25

1
2 resident of Maine, he's a resident of Texas,
3 he's been after us for a number of years. He
4 filed complaints with the IRS against us and
5 that sort of thing. So, it's sort of
6 bordering on harassment at this point. So
7 again, uh, a good faith disagreement on the
8 meaning of the law should not result in such
9 personal attacks as part of the proceeding
10 before a regulatory board. Let's see what
11 they're referring to in particular. In 2005,
12 uh, I was driving around one weekend and
13 listened to WGAN, which I like talk radio,
14 and they announced that this fellow named
15 Bill Becker would be appearing on the Monday
16 show. And I had never heard of Mr. Becker,
17 I'd never heard his organization. But I was
18 curious so I looked him up on the web and I
19 was very surprised that I didn't find certain
20 kinds of information on the website. So I
21 tuned in on Monday and I thought I would ask
22 about these things. So I called up, I got
23 on, I said now... Mr. Becker, I understand
24 looking at your background you have a
25 significant fund raising background. You've

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2 worked for Hebron Academy and so forth, some
3 other well thought of institutions in this
4 state. And one of the things that fund
5 raiser do is they recognize and honor their
6 contributors. So could you tell us who are
7 the contributors to the Maine Heritage Policy
8 Center? I can't seem to find this
9 information on your website. And he said
10 well it's people and companies, mostly from
11 Maine. And I said well, which companies and
12 which people? And he says all of our form
13 990, which is the IRS document; it's the
14 equivalent of a 1040 for individuals, uh, for
15 501(c)(3) not for profits. At that point,
16 Mike Violet [phonetic] the host hung up.
17 Said you have your answer and we move right
18 along, move right along. So what I did is,
19 uh, that day and this is, uh, these
20 documents, I sent a letter, certified mail to
21 Mr. Becker saying Dear Mr. Becker—and this
22 was March 28th, 2005. Today on WGAN morning
23 new show you stated that you disclosed the
24 identities of those funding your organization
25 on your IRS form 990. I've since examined

1
2 your 2003 filing, what appears to be your
3 most recent that's available on commonly
4 accessible sites online. Unfortunately you
5 chose not to disclose that information there.
6 Perhaps you meant to say that you would be
7 disclosing this information on your
8 forthcoming 990 filing. Is that the case?
9 Or counter-wit to what you stated publicly,
10 do you choose not to identify the sources of
11 your funding. In any case, I request a copy
12 of your form 990, as soon as it's available.
13 In addition I request a copy of your form
14 1022 application, which is for not-for-profit
15 503(c)(3) status. I look forward to
16 receiving your reply clarifying your
17 disclosure policy as well as the requested
18 documents. Uh, according to the, uh,
19 regulation they have 30 days to respond.
20 It's a very common request. I've worked for
21 a 501(c)(3). People walk in the door all the
22 time for these documents and you give them to
23 them. In fact there's a box to check on your
24 form 990 if you say that you've complied with
25 this. Well 30 days passed and I didn't get a

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2 response. I respectfully waited another 10
3 days and rather than go back and ask again,
4 which seemed entirely inappropriate, I sent a
5 letter to the appropriate authority at the
6 Internal Revenue Service. And I, as you can
7 see on the second document, uh... I just, uh,
8 cite the, the, uh, law and say on March 28th
9 I sent a formal request. I just recounted
10 what had happened. I understand they have 30
11 days. I've not received any communication.
12 It's 40 days. And I also say I am concerned
13 over the legitimacy of this 501(c)(3)
14 because... they can't seem to fulfill basic
15 reporting requirements. Please let me know
16 how we can follow up, etcetera, etcetera. I
17 got a letter back from the IRS acknowledging
18 that they were looking at this and I did
19 receive a communication from Mr. Becker after
20 that. After they obviously nudged him, I got
21 the 1023 and a promise that I would get the
22 2004 990 when it was available. But, uh, I
23 think I called up the IRS and asked how one
24 would file a complaint. I am not aware of
25 any form of complaint other than this letter.

1
2 Uh, it seems by the statement of counsel, as
3 well as Mr. Becker that I previously had
4 filed complaints, plural, against Maine
5 Heritage Policy Center with the Internal
6 Revenue Service. If you can produce those
7 complaints, I'd appreciate that because
8 that's uh, that's a statement of fact. And I
9 don't think the facts are born out by the
10 reality here. At least I... have no evidence
11 of it. So anyway. My number one. Again
12 the—I do want to point out this is our third
13 session. And... what the chairman discussed
14 about the process, we've already been through
15 this. There was a question of the factual
16 accuracy of documents presented by Maine
17 Heritage Policy Center. There are
18 significant questions today about those. I
19 am more than happy as we've already indicated
20 to go under oath. So, just want to make that
21 clear. So lie number one, unless they can
22 prove that they've got multiple filings that
23 I presumably made to the IRS complaining
24 about them, I—I'd love to see it. So anyway,
25 that's how we are here. Uh, and again, it

1
2 just simply started—oh, I'm sorry, I might
3 add, that this started out as a journalistic
4 endeavor. I intended to write a piece for
5 the Portland Phoenix about this because
6 there's nothing a journalist likes better
7 than when we get an organization that tells a
8 lie in a public forum about its finances.
9 Man that is a red flag that gets a reporter
10 very interested. But what happened is I
11 ended up leaving the state. My wife and I
12 moved down to Texas, uh, not long after this.
13 And so in fact, I did not do, uh, the follow-
14 up, uh, with a number of things and just let
15 it go. Before I did leave the state, I did
16 give, uh, my research on the Maine Heritage
17 Policy Center which was extensive to a number
18 of journalists hoping that someone would
19 make—need make use of this research. So
20 that's part one. Just how we got here. And
21 again, uh, part one and lie number one.
22 Again I welcome them to disprove and show
23 that there is a multiple IRS complaint and
24 also that, uh, I have, uh, had this wild-eyed
25 campaign against them going back to 2004,

1 according to Mr. uh, uh, Becker's public
2 statements. Just don't see it. Okay. So.
3 Let's move on from there and let's talk
4 really about the case. And the case, once
5 again, is what we started out with, going
6 back to October. And that is how Maine
7 Heritage Policy Center is in fact a PAC.
8 Now, uh, because we had to truncate our
9 session this morning to accommodate Mr.
10 Billing's schedule, uh, the longer
11 presentation that I did have scheduled for
12 last Tuesday, I had to cut down
13 significantly. And key elements of that I
14 put together in op-ed pieces that are copied
15 in your packet that are in today's
16 newspapers. There's an op-ed piece in the
17 Lewiston Sun Journal and another in the
18 Bangor Daily News responding to an op-ed that
19 came out the day of the show last Tuesday.
20 Uh, last Tuesday there was a op-ed piece, uh,
21 an unsigned editorial from the editorial
22 board saying that clearly, uh, the major
23 purpose provision, our definition of a PAC,
24 uh, didn't apply here. I went back to uh,
25

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2 uh, to their editorial board director and
3 said actually your entire argument here is
4 back-based on a factual error and I would
5 like a chance to respond in your pages, and
6 that response is in today's pages. It's also
7 uh, again, contains a significant piece of
8 the presentation that I had in fact planned
9 for last Tuesday. To give you a quick
10 summation of that, uh, the analogy I use—it
11 is difficult looking at this. You don't know
12 if there's a PAC, and then there's a think
13 tank. How can these be the same and how do
14 they operate the same way. The major purpose
15 seems to be off the mark talking about that.
16 And the fact they provided a large folder
17 thing showing all kinds of interests. When
18 you examine it through a certain perspective
19 in terms of looking for major purpose, you
20 see something quite different. So what
21 happens is this. Uh, the basic concept... if
22 you want to think of a basic analogy where
23 you want to understand how Maine Heritage
24 Policy Center has crossed over the line, is
25 that most of your work looking at taxes like

1 tracking a stock on the stock market. It's a
2 single issue. Really focused, you just look
3 at this particular number as far as how it
4 rises and falls with the market every day.
5 Now a think tank operates more like a mutual
6 fund. It's an amalgam of issues. And
7 through that it's designed—actually—to not
8 have a major purpose and so decides that the
9 reporting responsibilities. My contention is
10 that in the uh, campaign for TABOR [phonetic]
11 that Maine Heritage Policy Center lost sight
12 of a think tank concept and it became like a
13 mutual fund manager who overly invested in a
14 single issue, defeating the whole purpose of
15 a mutual fund which is to spread it around.
16 Now... another, uh, just our preliminary
17 document, uh, sort of a cursory analysis of
18 the folder, of their binder. Uh, the
19 majority of the binder is their press
20 releases in the past year. Uh, what I've
21 done here in this document, is analyze their
22 press releases, uh. They started doing press
23 releases once a week starting at the
24 beginning of 2005. And so we have analysis
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2 of 2005 to see how this mutual fund
3 distributed its interest. And in 2005 the
4 breakdown came down to out of 52 total press
5 releases there are 20 for health care, 15 for
6 their economy taxation area, then there's
7 other administrative areas and then Social
8 Security was another issue. The three prime
9 areas in their mission statement are
10 healthcare, economy taxation and education.
11 In 2005 there was no sign of education. So
12 anyway, as you look at the numbers here you
13 see that the--there is no major purpose. It's
14 nicely balanced, uh, we've got 38% in
15 healthcare, uh, actually to get a better view
16 of the actual interest areas if I eliminate
17 the other administrative releases, which are
18 mostly press releases about a speaker and/or
19 a luncheon, etcetera, etcetera. And again,
20 uh, this sort of analysis is very, very
21 typical in the media business and actually I
22 performed a number of these analyses for a
23 National Public Radio new show. Uh, again,
24 obviously since I've delivered this it's
25 really, uh, uh, it's really a suggestion how

1 the Commission might want to proceed. Uh,
2 independent analysis of this sort would be
3 very, very helpful. Uh, what I have here is
4 cursory. I think if you examine my
5 methodology, you'll find it's entirely
6 appropriate. And I've been extremely fair.
7 So in 2005 50% of the press releases were
8 focused on healthcare, 37.5% on economy and
9 taxation and 5% on Social Security. So now
10 let's compare this to the conduct of Maine
11 Heritage Policy Center during the TABOR
12 campaign. Since, uh, comparing 2006 doesn't
13 really work as the year is not over. They
14 put out a bunch of releases, uh, since the
15 campaign, so what I did is I looked strictly
16 at the calendar year preceding the November
17 vote. So we're going from, uh, uh, November
18 2005 to October 2006. And if you look at
19 this, there's been a major shift in the focus
20 of Maine Heritage Policy Center. 71.9% of
21 the press releases relate to economy and
22 taxation, healthcare's dropped down to only
23 14—just a shade over 14%. And the other
24 category is also 14%. Let's narrow down the
25

economy taxation area is not just TABOR but TABOR plus other economy taxation issues. I break it down further because not all the TABOR releases are explicitly TABOR but many of them develop talking points which became part of the TABOR marketing. You see that breakdown on the second page. Uh, let's cut to the chase. Basically, uh, and again you want to get an independent analysis of this nature. And that's--again, this is a--just a cursory look, just to give you some idea of how glaring the focus is. If you look at the press releases, which again comprise the majority of their binder, you'll find that 67.3% directly relate to the TABOR campaign. 16% to economy--other economy and taxation issues and only 16.3% to healthcare. So there's been a fundamental shift, and again this analogy, think about a mutual fund manager moving all the assets or a majority of them, and that is the standard to judge major purpose as defined--as to define what a PAC is under the Maine law. So again, that's my analysis. I tried to be very fair. I've

1
2 done it—I've done these sorts of analyses
3 professionally but I encourage you to get a
4 third party to do that. This is just to give
5 you as it were probable cause as to why you
6 should be deeply concerned as to whether
7 Maine Heritage Policy Center is in fact a
8 PAC, uh, and John Branson will give you the
9 case law on this matter. Uh, the other part,
10 uh, [Coughing] remembered how I really
11 thought that they must have gained—gotten
12 money and contributions. I mean I really
13 felt it in my heart, it wasn't just
14 intuition. As you remember, the way I
15 analyze in terms of a business dynamic, uh,
16 Maine Heritage Policy Center is operated as a
17 marketing and public relations firm
18 [Coughing] proponent PAC in this measure.
19 And my experience with marketing and public
20 relations is they don't feed the sales effort
21 with something wrong. So let's go look at
22 how, as a marketing and public relations arm
23 to the legitimate PAC, the ostensive PAC, uh,
24 money came in to Maine Heritage Policy
25 Center, whether they took it or not, if they

1
2 referred it over to Mary Adam's [phonetic]
3 PAC does that not also constitute a funding
4 and transfer mechanism. They created this
5 very high visibility. People perhaps
6 mistakenly called up and said gee I'd like to
7 contribute money to your TABOR effort and
8 even if they said if we take Mr. Billing's
9 words, no, no, no, we can't take that money
10 which he says they did and didn't and I just
11 am actually not quite clear. Well we'll get
12 some clarity hopefully on that. If they then
13 refer those people to Mary Adams are they not
14 a funding and transfer mechanism? They've
15 done the marketing and public relations.
16 They've drawn people to contribute. Even if
17 they didn't take the money themselves. But
18 that money gets directed to the proponent
19 PAC. I believe that under Maine law defines
20 them as a PAC. So, uh, there's also a
21 specific example in the--Mr. Billings offers
22 us that really should be looked at in some
23 detail. And his response to December 4th,
24 uh, he refers to a particular \$3,000
25 donation. And once again, uh, he says that

1
2 the staff spoke with the donor and said we
3 can't accept this money. They took \$500 of
4 it. But \$200--\$2,500 was turned away. Could
5 it be that this money was sent over to Mary
6 Adam's PAC? That would be again, a good
7 example of how a funding and transfer
8 mechanism would operate. Uh, also, I'm sure
9 you all are familiar with the operation of
10 political campaigns that, uh, it may well be--
11 let's offer a possible explanation of why
12 this donor would move the money over. Maybe
13 they called up and said gee I'd like to run a
14 series of ads on WGAN. And they said well
15 we've done a few advocacy ads. We'll take
16 some of your money but if you want to run
17 ads... you want to go over here. Okay. I have
18 no idea--that's speculation. But if that's
19 what happened, again it makes it all the more
20 clear how Maine Heritage Policy Center
21 operates in fact as a funding and transfer
22 mechanism for the proponent PAC and therefore
23 by Maine law is a PAC.

24 HON. KETTERER: Mr. Lindemann your 20
25 minutes is up. I don't know if counsel--I

1
2 don't know how close you are to the end. And
3 I-counsel wants to give you a few of his
4 minutes or...

5 MR. LINDEMANN: Let me take just one
6 last moment because the other piece, and
7 again, I'm very sorry--

8 MR. BRANSON: [Interposing] Well about
9 how long do you have?

10 MR. LINDEMANN: Uh, uh... I need 10
11 minutes.

12 MR. BRANSON: Could we have 5 additional
13 minutes? Possibly 45 minutes? Would that be
14 out of the ordinary?

15 HON. KETTERER: I-Commissioners have any
16 objections to amending our earlier comment
17 about how long--

18 MS. THOMPSON: [Interposing] No
19 objection.

20 HON. KETTERER: Mike?

21 MR. FRIEDMAN: I have no objection as
22 long as we stick to the time table we set
23 forth--

24 HON. KETTERER: [Interposing] Yeah.

25 [Crosstalk]

1
2 HON. KETTERER: In other words it would
3 carry--

4 MR. FRIEDMAN: [Interposing] It would
5 not-[unintelligible] 90 minutes per side.

6 HON. KETTERER: Yeah, 90 minutes per
7 side. But I think if-if-if we have to give
8 something extra, I mean this is the
9 complainant in the matter as opposed to
10 someone else who-who'd like to be heard in
11 supporting the general position. So I would
12 be inclined to do that under the
13 circumstances. Okay. We can give Mr.
14 Lindemann an extra 5 minutes and we'll just
15 hold you to your 20. Can we go with that?

16 MR. BRANSON: Yeah.

17 HON. KETTERER: That way-and give you an
18 extra 5 minutes? Okay go ahead--

19 [Crosstalk]

20 MR. LINDEMANN: --follow up. Let's go
21 look at, uh, my last piece is really-so we've
22 got good reason to go perform a thorough
23 investigation of Maine Heritage Policy
24 Center, to make a determination as to PAC
25 status. The question is how that

1 investigation should proceed. I want you to
2 look at how they've been fundamentally
3 dishonest with the Commission and so that any
4 such investigation should be... under oath and
5 using the fullest investigatory powers of the
6 Commission. The Maine Heritage Policy Center
7 officials and their documents need to be
8 subpoenaed. 'Cause let's look at what
9 they've given us willingly and how valuable
10 those are. First of all, let's go look at
11 the documents. I--there were certain, uh, we
12 really have--let me cut my presentation here.
13 Let's cut to the chase and let's go to this
14 document. Also I might add the Sun Journal
15 piece puts in context the fundamental
16 dishonesty of the Maine Heritage Policy
17 Center in some general terms. But I think,
18 uh, uh, will help you contextualize, uh,
19 their particular conduct here with the Board--
20 uh, the Commission. Okay so first of all
21 just in terms of text analysis, uh... let's
22 start out with the one document we know that
23 gives us a direct window as to Maine Heritage
24 Policy Center's actual practice. It's not
25

1
2 been lensed, uh, and cherry picked by their
3 attorney. What we actually have that tells
4 us something about them. And this is the
5 document dated November 6th. And... uh, which
6 caused such a stir. Now let's go take a look
7 at this---

8 MICHAEL FRIEDMAN: [Interposing] Are you
9 referring to the letter to Mr. Briney
10 [phonetic]?

11 MR. LINDEMANN: Yes. And let's compare
12 it--let's look at where it comes from. Now
13 there are two other documents, Exhibit A and
14 Exhibit B... that Mr. Billings has provided us
15 and you can see that there's a relationship
16 between these documents. Now Mr. Billings
17 claims that they're general fund raising form
18 letters. But remember this is not a form
19 letter for you Mr. Billings. It's not a form
20 letter. It really looks like a form letter
21 and in fact in early press reports they
22 apparently acknowledged it was a form letter.
23 I spoke to uh, Fred Bever of Maine Public
24 Broadcasting Network that night and I asked
25 him if Billings and uh, Maine Heritage Policy

Center had confirmed that it was a form letter. And he told me that they had. It might be worth to ask Mr. Bever, he may well have interview audio with them from the morning of the, uh, uh, when these documents came out, where he—where apparently the Maine Heritage Policy Center acknowledge that it was a form letter. So perhaps Mr. Bever's got that tape, it would be extremely helpful. Because again these other documents came out once they realized how damaging it would be to them. Or meant to be acknowledged that this was a form letter. So first they sent us a form letter, that's what was the Portland Press Herald story and then suddenly it's not a form letter. So let's take a look at this. First of all, there are similarities between the form letter he offers. The first and last sections, the opening and the close, what we see in yellow here, are the only pieces that there are similarities between these documents. Now supposedly this document was cooked up with some minor additions to customize it for this

1 particular donor. And you notice how minor
2 the actual import of that form letter is.
3 Uh, actually if you look at the other
4 document which is the fund raising letter
5 that Mr. Billings presented us dated October
6 18th, we'll find the body of the TABOR
7 statement, and you'll see in this document
8 the blue shading, that this is where the rest
9 of the document came from. Uh, now also Mr.
10 Billings, so that he doesn't get caught in a
11 lie, saying that, uh, uh—he says that this
12 document was only sent out after the 7th—
13 after the voting day, despite the fact that
14 it says we—there's only a few weeks until the
15 election, in order to be successful we are
16 asking for your financial investment. So he
17 sent this one out after the 7th, this back
18 when—or was it modified after the 7th? This
19 document is clearly written and intended to
20 go—it's dated October 18th. But it's very
21 convenient that they just didn't send it out.
22 They made this effort... mostly, uh, you fund
23 raise before the thing's been decided because
24 that's a good time of you want to raise
25

1
2 money. To wait until after it's been decided
3 seems something, uh, unusual. In any case,
4 let's look at this document. Now what we are
5 told is that on-on November 6th, that
6 somebody took the form letter, this document,
7 made minor adjustments to it. They produced
8 this document which is a form letter but it's
9 not a form letter because it's
10 [unintelligible] one off, because if it's a
11 form letter [Coughing] it sure looks like it
12 went out to a bunch of people who gave money
13 to TABOR. And then Mr. Billings and Mr.
14 Becker are maybe not perjurers, but they
15 certainly are liars. So let's look at the
16 likelihood of this, uh... This is November 6th.
17 I presume you all are familiar with how a get
18 out the vote effort is fairly consuming in an
19 organization. You've already seen how all
20 consuming TABOR was for Maine Heritage Policy
21 Center. We're to believe that somebody took
22 the time to go hash together these various
23 documents... to go create this one off to send
24 out to a donor, who's given \$125? They must
25 have not had much to do on November 6th. I

1
2 mean if—I don't know—again if you've ever
3 been involved in a get out the vote, uh, it
4 means you get out. So they're sitting back
5 at the office doing this? Again, it strains
6 one's credulity. Also note that even if you
7 took such great care they let them just lie
8 with only a few weeks until the election
9 which is also in this document, it's only a
10 few weeks until the election, that he one)
11 maintained that they made this Herculean—
12 actually let's call it an incredible effort
13 because it's just not a believable effort to
14 put this document together. You think they'd
15 pick up on that. And likewise later when
16 they supposedly sent this out on the 7th,
17 that they didn't clean it up to get it
18 temporally right to make it clear that it was
19 going out after the election? After the
20 voting? So we're told to believe this
21 amazing number of things. Just one last
22 thing and I'll just close out here, uh, and
23 that is we're—we've already been down this
24 road. Uh, I came to you here, remember I,
25 uh, after the last session, I'm trying to

1
2 find the exact document which is in-in your
3 package. Uh, what-where we ended up here was
4 that at the October 31st session... I had, uh,
5 you know, heard from Mr. Billings basically
6 that unless somebody comes forward with proof
7 that we've taken money for TABOR, move along,
8 move along. We're not a PAC. Well, and then
9 I went to Mr. Wayne and I said quite
10 literally, tell me. I said I feel in my
11 heart of hearts, that these guys must be
12 taking money and I've given you a good reason
13 why just in terms of business understanding.
14 How peculiar it would be if there wasn't
15 money flowing to this organization given
16 their marketing and public relations effort.
17 I said please tell me. What is the witch's
18 broom here that I can come back with. And
19 Mr. Wayne pretty much followed up with what
20 Mr. Billings said. Show us the proof that
21 they've taken money. Now when he did that,
22 when Mr. Wayne said that, I basically, again,
23 given my background in journalism, I felt
24 charged to go find the witch's broom. Now
25 the witch's broom as you know is proverbially

1 something that's meant to be impossible to
2 get. Meant to be impossible and in fact
3 should have been impossible because it really
4 was the job of the Ethics Commission and
5 proper investigation to get these documents.
6 But I was put in a situation where either I
7 could walk away or I could follow my
8 conviction... to its logical conclusion. And
9 again, having a skill and a background as a
10 journalist, I'm well aware of investigative
11 journalistic techniques, I got you what you
12 wanted. I got you the witch's broom. And
13 now Mr. Billings—I took this to the Wizard of
14 Oz but now he wants to take us through the
15 looking glass with this highly improbably,
16 extremely complicated tale that simply... just
17 is exhausting. And I think you'll find that
18 whatever information he gives you willingly,
19 it's going to lead you on a—take you on a
20 wild goose chase. You'll be chasing around,
21 around an inconclusive evidence. He'll give
22 you a lot of pieces to the puzzle but there
23 won't be any edge pieces and you will not get
24 a clear sense of how their organization in
25

1
2 fact operates. It's really actually
3 calculated and designed to frustrate
4 investigators so that they'll say well we
5 have looked at it and it's kind of
6 inconclusive and we've made an effort. And
7 do we really want--they get an FB [phonetic].
8 And that's calculating. So even if you want
9 to say--even if you want to say that they were
10 rushed in their October 24th statement, maybe
11 made errors, the staff suggests that maybe
12 that the factual errors seem very clear
13 there, were a result of them being rushed. I
14 don't doubt they were rushed. But that
15 doesn't get them off the hook. Certainly
16 come November 24th, this document is a
17 carefully calculated well thought out effort
18 to deceive the Ethics Commission, to keep
19 them from the truth in this matter.

20 HON. KETTERER: Mr. Lindemann I'm going
21 to stop you right there. Um, and for the
22 record, uh, you had the 20 minutes you
23 requested--

24 MR. LINDEMANN: [Interposing]
25 Absolutely.

1
2 HON. KETTERER: You requested--your
3 counsel requested 5 additional minutes. I
4 gave you 10 additional minutes instead of 5.
5 We are not subtracting any time from counsel
6 because he has legal arguments. You are
7 doing the factual underlying but... for the
8 record, you're actually to the point where
9 you are--the last three minutes of your
10 testimony is about what we can anticipate Mr.
11 Billings doing in the future. And I don't
12 feel that in terms of getting factual
13 testimony that really is a proper area for us
14 to speculate on. I mean what happens in the
15 future happens in the future. I appreciate
16 your remarks and if there are, uh, any
17 Commission members who have questions for Mr.
18 Lindemann, this would be the opportunity to
19 ask them. Mavourneen?

20 MS. THOMPSON: Um... yeah, well I have
21 questions that I want to ask Mr. Lindemann
22 and also Jonathan and also--

23 HON. KETTERER: [Interposing] Well right
24 now can we focus on the witness we've got
25 right--

1

2

MS. THOMPSON: [Interposing] Yeah.

3

HON. KETTERER: --in front of us.

4

5

MS. THOMPSON: Because questions to Jonathan and Phyllis will be based on the testimony that has occurred so...

6

7

[unintelligible] want that.

8

HON. KETTERER: Okay.

9

10

MS. THOMPSON: They might--it would be in reference to the testimony that we just heard.

11

12

HON. KETTERER: Okay. But do you have any questions for Mr. Lindemann--

13

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MS. THOMPSON: [Interposing] Yeah. You said earlier, I think you said that... MHPC is a marketing and public relations arm to, uh, the, uh, legitimate PAC, to the--to the, uh, uh, what shall we call--the Adams PAC, okay? To the TABOR PAC. Now was that, uh, reference, uh, marketing and public relations arm, specifically your characterization or is that from in fact the either testimony or the um, documents of MHPC?

24

25

MR. LINDEMANN: That was actually in our previous [unintelligible], the initial

1
2 complaint that I brought was that given a
3 change in the media marketplace, the value of
4 public relations had grown enormously, uh, in
5 relation to the value of advertising in that
6 Maine Heritage Policy Center was taking
7 advantage of that. But, uh, essentially
8 taking on the public relations role in the
9 un-basically taking on the marketing and
10 public relations in the un-paid media, or
11 what's called the earned media. Uh, through
12 the TABOR campaign. And in fact initially my
13 concern wasn't so much, uh, any illegality,
14 but just a major concern, in a larger sense
15 for the Commission and perhaps the
16 legislature that, uh, judging contributions
17 to a campaign without accounting for the
18 money that goes into public relations didn't
19 give a true picture and in fact in the
20 changing media market we may be losing
21 transparency.

22 MS. THOMPSON: So. So. Let me get-let
23 me make clear, I-I'm trying to figure out if-
24 if-if marketing-if this phrase, marketing and
25 public relations firm, to the Mary Adam's

1
2 PAC, is in fact your characterization of
3 MHPC'S role, or is it in fact a self-
4 description by MHPC, either in documents or
5 in testimony that you're aware of.

6 CARL LINDEMANN: Oh no it's my
7 characterization. I--that is my analysis. I--
8 I uh, in my profession I talk to literally
9 dozens of companies that use, uh, new media
10 concepts to uh, do marketing and public
11 relations. And so it just seems apparent--
12 that is my characterization.

13 MS. THOMPSON: Okay. Thanks.

14 HON. KETTERER: Thank you. Mike, do you
15 have anything?

16 MR. FRIEDMAN: Uh, I do have a number of
17 questions but I'm going to, uh, not ask
18 because I understand that we have some time
19 constraints and I want--and I want to make
20 certain that everybody has the chance to, uh,
21 move forward with their arguments. However I
22 do have just a question on--a couple of
23 questions on one area. Did you know David
24 Briney [phonetic] before November 1?

25 MR. LINDEMANN: Yes.

1
2 MR. FRIEDMAN: And how long had you
3 known Mr. Briney?

4 MR. LINDEMANN: I've known David Briney
5 since we were freshmen in college together.

6 MR. FRIEDMAN: David Briney is the
7 individual from Denver, Colorado who sent the
8 check to, uh, MHPC for \$125 dated November 1,
9 2006?

10 MR. LINDEMANN: Correct.

11 MR. FRIEDMAN: Did you ask David Briney
12 to send the check.

13 MR. LINDEMANN: Yes we have a, uh,
14 deposition, or is it an affidavit?

15 MR. FRIEDMAN: I don't care about his
16 affidavit. I'm just asking if you asked
17 David Briney to send MHPC a check.

18 MR. LINDEMANN: Oh. Of course I did.

19 MR. FRIEDMAN: Okay.

20 MR. LINDEMANN: Actually, I also
21 included in your packet, uh, the Society of
22 Professional Jour—I've had one discussion
23 with the chair of the ethics division at the
24 Society of Professional Journalists which I
25 am a member, to talk about what the

1
2 appropriate boundaries are. And let me just--
3 well I need this for the record--

4 MR. FRIEDMAN: [Interposing] You-you-you
5 answered my question. Let me just ask one
6 more. You indicated that you used... your
7 journalistic techniques to bring out the
8 witch's broom. Which was this check. What
9 did you use journalistically to get this
10 other than a phone call to a friend?

11 MR. LINDEMANN: Well I-I-again, uh, it's
12 the general category, uh, as stated in the
13 guide here, uh, of, of surreptitious methods
14 of gathering information. Which you are not
15 to use except when traditional open methods
16 will not yield information viable to the
17 public. It also adds here that use of such
18 meth-uh, methods should be explained as part
19 of the story and this is what we're doing
20 here. Uh, but I believe I met that standard.
21 Uh, it was clear that there was no way to get
22 this information. I-I-uh, Mr. Wayne and
23 again felt charged at that point, uh,
24 legitimately to use legal methods that are
25 very standard to investigative journalism.

1
2 You send them a--yeah, they're sent something
3 and we get the actual amount--what's important
4 to note is... it's not a trap. It's nothing
5 except an opportunity for them to demonstrate
6 how they actually operate without it being
7 lensed or manipulated in any way. We got an
8 honest windmill. And that's--again I think
9 that is what the journalistic intention is
10 and was achieved here.

11 MR. FRIEDMAN: Yes [inaudible].

12 HON. KETTERER: Thank you Mr. Lindemann.
13 Uh, we're now going to turn to, uh, attorney
14 Branson and it would be helpful, as far as
15 I'm concerned, uh, if you could, uh, I mean
16 I'm not telling you how to structure your
17 arguments, but the legal end of this and the
18 legal analysis that you could enlighten us
19 from your perspective, that would be very
20 helpful to the Commission I think. And your
21 time starts now.

22 MR. BRANSON: Thank you very much, uh,
23 good morning. Uh, my name is John Branson.
24 Uh, I am counsel for the primary complainant
25 in this matter, Carl Lindemann. I'd first

1
2 like to thank the Commission for setting
3 aside this time to address and resolve the
4 important issues raised in the context of the
5 pending inquiry.

6 MALE VOICE: [Off mic] Sorry.

7 MR. BRANSON: Uh, into the campaign
8 finance and activities of the Maine Heritage
9 Policy Center. And for allowing us to be
10 heard. Uh, before I begin my, uh,
11 presentation, I did want to briefly address
12 the issue about sworn testimony. Um, I'll
13 just make two points about that. Um, there's
14 no denying that there's compelling evidence,
15 uh, already in existence that the Commission
16 has been lied to by the Maine Heritage Policy
17 Center twice in the context of this pending
18 complaint. And uh, and that, uh, on that
19 basis alone, uh, this makes this case a
20 unique situation which I think is—is not the
21 typical that perhaps the Commission Chair
22 referred to. Uh, the Maine Heritage Policy
23 Center has had the opportunity to make those
24 false statements, uh, on two different
25 occasions without being under oath. And

1
2 therefore as you all know, the most they can
3 be subjected to are civil penalties under
4 the—under the statutes you are instructed to
5 enforce. There's no, uh, criminal
6 liabilities that they face and they may get
7 up here and repeat the same lies again
8 without being under oath. Again they're not
9 facing any criminal penalties for that.
10 They'll just be subject to civil penalties.
11 That being said, I agree with Mr. Ketterer,
12 Commission Chair Ketterer that it's not
13 appropriate to take sworn testimony today,
14 but for different reasons, reasons are that
15 subpoenas have not been issued in due course
16 by the Commission to Mr. Billings and to Mr.
17 Becker. I—I think due process would require
18 that subpoenas be issued in advance and I
19 also don't think you're likely to get sworn
20 testimony from, uh, at least Mr. Becker
21 unless he's under subpoena. And there are a
22 lot of issues I won't go into here, uh,
23 issues about compliance with federal and
24 state tax law for example that might, uh,
25 cause Mr. Becker to be hesitant about

1 offering his testimony under oath. So, um, I
2 agree they need to be subpoenaed to testify
3 under oath. And we hope that there will be
4 an investigation of this matter going forward
5 in which that could happen. As counsel for
6 Mr. Lindemann I would like to read a prepared
7 statement of approximately 20 minutes in
8 length. For the purpose of addressing three
9 principal topics. Un, one the importance of
10 reaching a fully informed decision about
11 whether the MHPC failed to comply with Maine
12 registration, reporting and disclosure laws
13 governing Political Action Committees. Two
14 the pressing need for a complete
15 investigation of all MHPC's finances,
16 extending through activities in 2006, backed
17 up by the full use of the Commission's
18 statutory subpoena power. And three the
19 pressing need for a thorough investigation
20 about material false statements made by the
21 MHPC or its representatives to the Commission
22 since the filing of Mr. Lindemann's complaint
23 on October 20, 2006. First I'd like to
24 address the Political Action Committee issue,
25

1 which I think is really important here. Uh,
2 on December 6th, after considering all the
3 materials and submissions before, the staff
4 sent memorandum to Commission members with
5 findings and recommendations. The staff
6 concluded that MHPC was not a PAC under Maine
7 law because it was founded before TABOR, this
8 is in quotes "and is engaged in a variety of
9 activities relating to tax reform and
10 economic issues beyond TABOR." As a result
11 the staff found that from an organizational
12 standpoint Maine Heritage does not and did
13 not have in its power and purpose the passage
14 of TABOR. Uh, as its major purpose I should
15 state, using the language of the statute.
16 The staff also found that Maine Heritage was
17 not a "funding and transfer mechanism" under
18 Section 1052 because according to the Maine
19 Heritage Policy Center it has received only
20 limited contributions to implement TABOR.
21 The staff also concluded, astoundingly I must
22 add, that Maine Heritage was not a PAC
23 because it did not take the step of
24 establishing a segregated fund to receive and
25

1
2 spend monies to implement TABOR. In reaching
3 these conclusions the staff noted that it was
4 relying solely upon material submitted by
5 Maine Heritage to the Commission thus far,
6 before any formal investigation by the
7 Commission had even begun about the finances
8 and activities of this organization. Just as
9 in its initial memorandum to the Commission
10 dated October 30, the staff appears all too
11 content to accept the representations and
12 voluntary submissions of the MHPC as a basis
13 for recommending that the Commission not
14 treat Maine Heritage as being subject to the
15 laws governing Political Action Committees in
16 Maine. Given that it has subsequently been
17 revealed that Maine Heritage lied to the
18 Commission and its staff for the specific
19 purpose of squelching any investigation, or
20 required disclosure of its finances and
21 activities, it is utterly surreal that the
22 staff would even consider recommending to the
23 Commission that the statements and voluntary
24 submissions of Maine Heritage continue to be
25 taken at face value. There are another—

1
2 number of other problems with the staff's
3 analysis and conclusions about the Political
4 Action Committee issues that are worth
5 addressing here. First regarding major
6 purpose. The staff did not directly confront
7 or examine what logically is the initial
8 determination that must be made as a
9 predicate to the major purpose assessment.
10 Specifically, what is the proper contextual
11 or temporal framework to be applied in
12 determining whether Maine Heritage should be
13 subject to PAC laws with regard to its
14 activities in support of TABOR. The staff
15 assumed that such determination is properly
16 made by reference to broad purposes for which
17 the Maine Heritage Policy Center was founded
18 in 2002. And by reference to all its
19 political activities over the past four years
20 and multiple election cycles. Not
21 surprisingly the Maine Heritage Policy Center
22 is urging the Commission to adopt the very
23 same approach. The first problem with this
24 approach is that it completely ignores the
25 fact that all PAC registration and reporting

requirements set forth in sub-chapter 4 are governed on a calendar year basis. For a number of compelling reasons, the Commission must give strong consideration to an approach that applies the provisions in section 1052 in this case by reference to the activities of Maine Heritage in a given calendar year. In this case, calendar year 2006. The Commission should undertake an investigation of all Maine Heritage's finances, expenditures and activities in 2006, to determine whether the passage of TABOR was its major purpose in that calendar year. In addition to respecting the provision for calendar year administration and compliance, clearly set forth in section 1053 and 1056, the calendar year assessment of major purpose is vividly justified by considering the ramifications of the approach urged in this case by the staff and by the Maine Heritage Policy Center. If the Commission decides that organizations can circumvent PAC registration and reporting requirements simply by establishing an organization with a

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2 broad missions statement, by neglecting to
3 dissolve after each election cycle and by
4 focusing on a different issue each year or
5 each election cycle, then the Commission will
6 open the door wide open for massive amounts
7 of money to be poured into policy
8 organizations, which in turn can engage in
9 broadcast and print advertising, mass
10 mailings and telemarketing in an effort to
11 influence the outcome of a ballot measure
12 without ever having to disclose to the public
13 their position on the measure, their identity
14 or their address. Keep in mind that based on
15 the approach recommended by the staff and
16 Maine Heritage, a self-described and ongoing
17 policy institute or think tank that raises
18 \$10,000,000 in a given calendar year to
19 promote the passage of a ballot initiative
20 and which raised into that only \$5000 for
21 other purposes, would not be treated as a PAC
22 nor required to establish a separate PAC to
23 conduct such activities. Rather such an
24 organization would be permitted to file a
25 1056(b) report with much more limited

disclosure requirements to the public. Particularly with regard to the explicit disclosures to the public that are made in the context of an organization's efforts to influence the outcome of an election. In the context of media appearances, broadcasting, print advertisement and direct mail and telephone appeals, the organization would not be required in accordance with Title 21A, Section 1055 to state clearly and conspicuous-conspicuously its identity and address and the fact that the organization specifically authorized the message or communication. Nor would it be required to disclose what its decision is on the ballot measure. The organization could, for example, publish messages in newspapers and magazines that had met-and in matched mailings, without ever having to discuss its identity or its position on the ballot initiative. It cannot possibly that the Maine legislature intended to open the door to such flagrant circumvention of its laws by an organization that seeks to conceal the

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2 nature of its step-of its involvement in
3 political campaign activity and the origins
4 of financial support for such activity simply
5 by forming itself as a permanent organization
6 with broad purposes, by commingling all its
7 finances together and by switching the focus
8 of its political campaign activities in each
9 election cycle. It also cannot possibly be
10 that Section 1056(b) was enacted to serve as
11 an expansive loophole through which the
12 calculated circumvention of the more
13 burdensome PAC requirements would have the
14 sanctity of law. Even the staff's own
15 analysis here is faulty and unsupported by
16 its argument. In Section 1056(b) provides
17 that safe havens, such as organizations such
18 as the Maine Heritage Policy Center. I refer
19 you to the case of Volee [phonetic] v.
20 Webster, cited by the staff, a 1999 case in
21 which the U.S. District Court for the
22 District of Maine held is unconstitutional
23 the application of Maine PAC laws to persons
24 and groups whose major purpose was not to
25 promote the passage or defeat of a ballot

1 question. In that case the parties
2 protesting the application of PAC
3 requirements to their activities in seeking
4 to influence ballot measures were an
5 individual person, Paul Volee and his for-
6 profit business, Anitmet [phonetic] Resource-
7 Research and Development Association, which
8 at the time was customarily engaged in
9 publishing, printing, typesetting and
10 consulting on manufacturing and quality
11 issues. There was no dispute in that case
12 that the individual and a for-profit printing
13 and manufacturing and consulting company did
14 not have as its primary purpose or anywhere
15 near its primary purpose, uh, to influence
16 the outcome of a ballot initiative. Whether
17 in a specific election year in question or
18 any other year. Although the staff is
19 correct that the major purpose of the
20 provision of the statute was added largely in
21 response to the federal court's decision in
22 Volee, it cannot possibly be that the
23 legislature was also intend, uh, intending or
24 required to shield political and public
25

1
2 policy organizations from complying with PAC
3 laws in any election cycle or calendar year
4 in which that organization dedicates a
5 majority of its finance, staff time and other
6 resources to the passage or defeat of a
7 ballot initiative. While no Maine court has
8 squarely addressed the proper contextual or
9 temporal framework to be applied in
10 determining whether and when a standing pol-
11 standing policy organization or think tank
12 might properly be characterized as-as a
13 Political Action Committee, one court has
14 squarely addressed that question. In Iowans
15 for Tax Relief vs. Campaign Finance
16 Disclosure Commission, the Supreme Court of
17 Iowa in 1983 came to a conclusion very
18 different from that of the Commission's staff
19 in this case. Iowans for Tax Relief, or ITR,
20 an anti-tax policy organization founded in
21 1978 with 12 different objectives, became
22 involved in the 1980 ballot initiative
23 campaign to amend the Iowa constitution so as
24 to force limits on state spending and taxes.
25 The Iowa Campaign Finance Disclosure

Commission found that ITR had behaved as a political committee under Iowa law with regard to its financing and activities in the 1980 campaign and violated campaign disclosure requirements governing such political committees. The District Court at the County level reversed the ruling of the Commission, finding that ITR did not constitute a political committee. In the context of the appeal before the Iowa Supreme Court, Iowans for Tax Relief urged the court to consider its original organizational purpose and its 12 founding objectives in reaching a determination as to whether it was a political committee under Iowa law. The Iowa Supreme Court soundly rejected this suggested approach to applying the statute finding that it would establish the legal precedent for allowing groups like ITR to circumvent Iowa's laws governing the activity—the activities of political committees. The court appealed to the obvious overriding objective of Iowa law, which was designed to enable the public to

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2 consider the source and credibility of the
3 advocate in evaluating a ballot initiative.
4 The court found that the legislature could
5 not reasonable have intended that the
6 applicability of the political committee
7 statute was to be determined for all time by
8 the committee's original purpose. Common
9 sense and plain logic dictate that the nature
10 of the organization at the time of the cover-
11 covered activity is controlling. That's a
12 direct quote from the, uh, from the court
13 case. Second, on the issue of funding and
14 transfer provision of Section 1052, the fact
15 determination on this point, uh, and-and
16 Commission's determination uh, on this point,
17 cannot be made without a thorough
18 investigation of all Maine Heritage's
19 finances, expenditures and activities in
20 2006. Astoundingly the staff summarily
21 concludes that Maine Heritage was not in
22 funding and transfer mechanism by virtue of
23 the fact that Maine Heritage says that it
24 only received limited contributions for
25 TABOR. As is well known by now, the only

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2 contribution that Maine Heritage admits
3 receiving and accepting, specifically for
4 TABOR, is the one they were caught receiving
5 red handed days before the election and which
6 was not voluntarily disclosed to the
7 Commission by the Maine Heritage Policy
8 Center even though an investigation was
9 ongoing in this case. Maine Heritage Policy
10 Center asks the Commission to believe that it
11 did not receive and accept any other
12 contributions other than Mr. Briney's in the
13 many months leading up to the election. If
14 Maine Heritage had the temerity to receive
15 and accept a contribution from Mr. Briney
16 while it was under Commission scrutiny for
17 that very specific activity, just days after
18 telling the Commission that it did not
19 solicit or accept any such contributions, it
20 is extremely likely that Maine Heritage
21 solicited and accepted such contributions
22 throughout their campaign of TABOR promotion
23 before the organization was entered-under any
24 scrutiny by the Commission. In the very
25 least the deceptive and dishonest actions of

1
2 the Maine Heritage Policy Center before the
3 Commission to date compels the conclusion
4 that an investigation through the full use of
5 the Commission's statutory subpoena powers,
6 rather than self-reporting by the Heritage
7 Policy Center under 1056(b), is necessary in
8 this case to enable the Commission to enforce
9 the law and safeguard the transparency in the
10 electoral process. Third, I want to address
11 the issue of whether the Maine Heritage
12 Policy Center was required to establish a
13 Political Action Committee in connection with
14 TABOR. Thus far the Political Action
15 Committee analysis in this case has been
16 driven by my—a myopic inquiry as to whether
17 the Maine Heritage Policy Center, broadly and
18 generally speaking, has as its major purpose
19 the passage of TABOR. By framing the
20 question in this way, the staff at Maine
21 Heritage have established the basis for
22 conclusion which, with subtle circularity
23 compels the conclusion that Maine Heritage
24 Policy Center was not subject to the laws
25 governing Political Action Committees. The

problem of circularity in the staff's analysis is best summarized as follows: It is worth noting that nowhere did the staff inquire as to whether the Maine Heritage Policy Center, by embracing TABOR as its principal cause in 2006, and dedicating extensive resources to promote its passage— passage, should have taken the necessary steps to establish a Political Action Committee with separate funding for purposes of engaging in that activity. Retaining the ability to continue to operate separately as a think tank called Maine Heritage Policy Center. Instead the staff embraces the failure of the Maine Heritage Policy Center to take any of the steps required of PACs under Maine law as a basis for concluding that Maine Heritage Policy Center is not a PAC. The Maine Heritage Policy Center does not establish separate organizations, committees or funds with each election cycle to finance and pursue its campaign activities, nor does it dissolve any such entities at the end of the election season.

1
2 Consequently the staff of the Maine Heritage
3 Policy Center would suggest Maine Heritage is
4 not a PAC. Further noting that the Maine
5 Heritage Policy Center did not establish a
6 separate fund for its TABOR activities in
7 2006, but rather commingled all its finances
8 together, the staff concludes that Maine
9 Heritage Policy Center does not fall within
10 the definition of a Political Action
11 Committee. If you read carefully, you will
12 see that the staff and Maine Heritage are
13 basically suggesting that certain actions and
14 omissions of the Maine Heritage Policy
15 Center, that would render that organization
16 out of compliance with Maine PAC laws,
17 instead of compelling the conclusion that
18 Maine Heritage broke the law, rather
19 establishes the basis for finding that Maine
20 Heritage is not a PAC and therefore not
21 subject to Maine laws governing PACs. Mr.
22 Lindemann asks the Commission to squarely
23 reject the circular analysis urged by the
24 staff and by the Maine Heritage Policy
25 Center. And that it instead resolve this

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2 matter by applying the laws in a
3 straightforward manner governed by plain
4 logic and common sense and further designed
5 to give full effect to the legislative
6 purposes and public policies underlying the
7 statutes the Commission is charged to
8 enforce. For starters the Commission must
9 endeavor to enquire as to when organizations
10 such as Maine Heritage, by virtue of their
11 efforts to initiate and/or achieve the
12 passage of a ballot initiative are required
13 to do what other organizations in the TABOR
14 campaign did. Establish a separate Political
15 Action Committee, carry out such activity in
16 the light of day, making full and complete
17 disclosure to the voting public in a manner
18 that safeguards the transparency that Maine
19 PAC laws were designed to promote. To use
20 just one example, the Maine Education
21 Association, which took a direct and
22 extensive interest in the outcome of the
23 TABOR campaign in 2006, established a
24 separate Political Action Committee under
25 Maine law for purposes of funding and

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2 promoting its efforts to defeat the TABOR
3 ballot initiative. In doing so, the MEA
4 complied with Maine laws governing such
5 organizations, making plain to the Maine
6 public its direct interest in the outcome of
7 the election and disclosing its identity and
8 position on the measure at every turn in
9 media appearances, in interviews, in mass
10 mailings, and in newspaper ads—
11 advertisements. The Maine public also
12 learned, for example, that the National
13 Educational Organization donated \$275,000 to
14 the MEA PAC to support the cause of defeating
15 the TABOR initiative which contribution was
16 widely reported in the news media for the
17 benefit of the Maine public and the Maine
18 voters. Under Maine law the source of these
19 substantial contributions, how the money was
20 spent, and other detailed information
21 regarding bank accounts, bank account numbers
22 and assets relating to the MEA PAC was or
23 will be duly reported to this Commission
24 under Title 21A, Section 1053. Obligations
25 which are much more extensive and

1
2 illuminating than those required under
3 1056(b). Moreover in the expenditure of
4 these substantial resources in the context of
5 a campaign itself, the Maine voters were
6 told, because they were required to be told,
7 the identify of the organization, the
8 organization's position on the TABOR ballot
9 and it was all consistent with the
10 requirements of Section 1055 of the statute.
11 Suffice it to say that Mr. Lindemann is
12 genuinely concerned about the gathering
13 momentum that is hearing this entire case
14 toward a determination that Maine Heritage
15 should simply be required to file a Section
16 1050(b)-1056(b) report, self-disclosing
17 information about its TABOR funding and
18 expenditures without having to provide, under
19 subpoena or otherwise, proper and complete
20 documentation of all its finances and
21 activities in 2006, so as to enable the
22 Commission to make a fully informed
23 determination under 21A, MRA, Section 1052.
24 In view of the actions and omissions of the
25 End-the Maine Heritage Policy Center, both

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2 prior to and during the pending inquiry, and
3 the clear obligation of this Commission to
4 enforce the laws with all the necessary
5 information and documentation before it, the
6 Commission has little choice but to commence
7 immediately a full investigation of the
8 finances, activities and expenditures of the
9 Maine Heritage Policy Center, backed by the
10 full use of the Commission's statutory
11 subpoena powers. Only in this manner will
12 the Commission be able to reach a fully
13 informed decision and establish useful
14 precedent to govern and restrain the activity
15 of organizations such as the Maine Heritage
16 Policy Center that are specifically designed
17 and intended to circumvent the Maine campaign
18 finance and disclosure laws. That's the end
19 of my statement.

20 HON. KETTERER: Thank you counsel. For
21 the record, uh, uh, you went over by three
22 minutes, but, um, uh, I felt under the
23 circumstances that your well prepared text,
24 which did not ramble and clarified a lot of
25 the legal issues needed to be heard by the

Commission, just for the record, that was the case. Uh, thank you. For questions by Commission members for counsel, attorney Branson.

MS. THOMPSON: Are we able to get copies, uh, of your written testimony?

MR. BRANSON: Yes. If you would allow me the opportunity to, uh, I did mention edits this morning to, uh, when I get back to my office I'd be happy to uh, edit, include those edits as best I can, and uh, e-mail to, uh, to Mr. Wayne, reporting to you, the uh, the text of my written statement.

HON. KETTERER: That would be great, thank you. Um... Mike?

MR. FRIEDMAN: Mr. Branson you make the, uh, the assertion that MHPC has lied to the Commission twice. Once... uh, I-I see in your letter to us, uh, with the reference regarding the check, the receipt of the check. What was the second?

MR. BRANSON: Uh, it's the same lie repeated twice. Uh, I was referring to the October 26th letter from Mr. Billings, uh, in

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2 which he said the Maine Heritage Policy
3 Center does not and never has received or
4 solicited, uh, money, uh, directly in support
5 of the TABOR campaign. Um, that statement
6 was repeated as far as I know, almost
7 verbatim at the October 31st Commission
8 meeting. He took the exact same position.
9 Uh, I'm not saying that the, uh, uh... there
10 are—I think there are ma—there are many other
11 inconsistencies and contradictions with
12 regard to a lot of the back flips that the
13 Heritage Policy Center has engaged in to
14 explain a lot of this information after it
15 came forward. The fundamental, uh,
16 misrepresentations I'm referring to are
17 basically that that basic misrepresentation
18 that has been made at least twice to the
19 Commission as far as I know.

20 HON. KETTERER: Any further?

21 MR. FRIEDMAN: No.

22 HON. KETTERER: Vinton?

23 MR. CASSIDY: Just one quick question,
24 um... you—near the end of your testimony you
25 were referring to the NEA, MEA, uh, you know,

1
2 as an example, uh, it's my understanding,
3 MEA, for example, they have a perpetual PAC,
4 [unintelligible] year after year after year,
5 don't they? Isn't that-- ?

6 MR. BRANSON: [Interposing] They--

7 MR. CASSIDY: --the idea?

8 MR. BRANSON: My understanding is they
9 established a PAC specifically for this
10 campaign.

11 MR. CASSIDY: Oh, you mean they--

12 MR. BRANSON: [Interposing] They--they
13 took the steps under Maine law to establish a
14 PAC--remember when you establish a PAC under
15 Maine law, you have to state what the purpose
16 of that PAC is. In this case it was to
17 defeat the TABOR initiative. And so they
18 were required to establish a separate PAC.
19 They don't have some ongoing entity that they
20 just dump in their political campaign
21 activities every year. They established, uh,
22 a separate PAC under Maine law and reported
23 what the, uh, what the--

24 MR. CASSIDY: [Interposing] But any
25 event, in the cycle they have a Political

1
2 Action Committee, I'm sure.

3 MR. BRANSON: Well I guess they're
4 complying with the law every election cycle
5 then. I mean that--that would be my
6 conclusion on that.

7 MR. CASSIDY: Very [unintelligible].
8 Thank you. Okay.

9 HON. KETTERER: Uh, thank you. Uh, just
10 a show of hands. Other people who are
11 present in the hearing room that want to be
12 heard, uh, on the side of the, uh, supporting
13 the position of the complainant. Mr.
14 Crasnick and Kit also?

15 MR. ST. JOHN: [unintelligible].

16 HON. KETTERER: Yeah.

17 MR. ST. JOHN: I'm not here as part of
18 anybody's case--

19 HON. KETTERER: [Interposing] Okay.

20 MR. ST. JOHN: I might have comments
21 that may be relevant--

22 HON. KETTERER: [Interposing] All right.

23 MR. ST. JOHN: --because I received a
24 request for comments from Commission
25 executive director but I want to be clear,

I'm—I'm not part of somebody's case.

HON. KETTERER: Okay. I apologize for—perhaps looking in your direction. My—asked that question.

MR. ST. JOHN: Well. I just wanted to--

HON. KETTERER: [Interposing] I'd rather [unintelligible] no.

MR. ST. JOHN: If you're going to take the two party's [unintelligible] and then take other comments, that would be the position where I feel it would be most appropriate for me to present in that timeframe. If there is such a timeframe. If—if before that is the only time there is, then I'll take a brief time when I can get it.

HON. KETTERER: Yeah, well, well, and I apologize if I've jumbled things up by lining you up in the wrong category, there. We appreciate your presence here. Uh, Mr. Crasnick, uh, do you want to come forward and uh--

MR. CRASNICK: [Interposing] Yes thank you.

1
2 HON. KETTERER: --and approximately how
3 long do you think your-- ?

4 MR. CRASNICK: [Interposing]
5 Approximately [Background noise} have about
6 around a five minute statement--

7 HON. KETTERER: [i] That would be great.

8 MR. CRASNICK: --then I'd be glad to
9 take questions.

10 HON. KETTERER: Okay. Why don't you
11 state your name for our record and tell us
12 what you'd like us to know about this matter.

13 MR. CRASNICK: Uh thank you my name is
14 John Crasnick. I'm here as the Executive
15 Director, uh, of Democracy Maine, uh.
16 Democracy Maine became involved with this
17 complaint. Uh, we believe that the Maine
18 Heritage Policy Center's attempt to
19 dramatically advocate for passage of TABOR
20 while misleading the Ethics Commission and
21 ignoring campaign finance laws mainly in an
22 attempt to be required, uh, and has raised
23 uncertainty in the initiative process. And I
24 please just preface this by-by asking you to
25 realize how serious a decision this is, uh,

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2 for you because of, uh, precedent that this
3 could set. Um, when I was here on October
4 31st, uh, I argued that the Center should be
5 required to file under Section 1056(b) which
6 discloses the amount of money they raised
7 and/or spent for the purpose of promoting the
8 passage of TABOR. Uh, much has happened
9 since then. There's been a lot of new
10 evidence and arguments on both sides, uh. I
11 would like to comment on the recommendations,
12 uh, that the Commission staff, uh, recently
13 submitted to you. Um, Jonathan Wayne and the
14 staff are correct that the 1056(b) filing
15 requirement is not limited to groups taking
16 part in express advocacy only. Democracy
17 Maine is in agreement with the ethic's staff
18 that the Center's activities during the TABOR
19 campaign fell into the category of trying to
20 influence or promote the outcome of an
21 election and that it should have filed a
22 1056(b). At this point however, simply
23 requiring the Center to file a 1056(b) we
24 feel is no longer sufficient. If one were to
25 visit the Ethics Commission's website today,

1
2 he or she would see that, uh, approximately
3 10 non-profit organizations filed 1056(b)'s,
4 uh, I think it was November 1st, which was
5 the last deadline, um. These organizations
6 knew that their activities for or against
7 TABOR, educational or not, could influence
8 the outcome of the election and therefore
9 they needed to file with the State to show
10 what funds they spent promoting TABOR. The
11 Maine Heritage Policy Center has lost the
12 right to file a 1056(b) without
13 investigation. Its behavior during the
14 campaign, along with its failure to report
15 what they did places its honest in reporting
16 in doubt. Its refusal to file a 1056(b)
17 along with its October 31st defense of that
18 decision could only be due to the Center not
19 understanding the law, or choosing not to
20 follow the law. Regardless, it is up to this
21 Commission to fully investigate the fund
22 raising and campaign activities of the Center
23 since authoring the model legislation that
24 became TABOR. If this Commission finds that
25 the Center should have filed at 1056(b) then

1 the Commission staff should further
2 investigate all of the Center's activities
3 during the campaign and place a value on the
4 time that the staff spent promoting TABOR in
5 newspaper articles, op-eds, published reports
6 and debates. If it's determined that over
7 \$1,500 in staff time was spent to promote
8 TABOR, the Center should face penalties and
9 fines for ignoring campaign finance
10 requirements. The investigation also
11 includes subpoenaing all the Center's
12 financial records since authoring the TABOR
13 legislation and auditing their fund raising
14 activities. The Center initially denied
15 accepting contributions supporting its
16 mission to support TABOR but that was later
17 proved not to be factual, um, and although
18 the Center claims that it couldn't be
19 mentioned, its work on TABOR to raise money
20 for its general funds. A recent, uh, Exhibit
21 A in uh, Mr. Billings' response for more
22 information, a, uh, general fund raising
23 letter, um, submitted in their own defense
24 contained passages such as, as the author of

1 the Taxpayer Bill of Rights, we believe this
2 initiative provides a roadmap to jumpstart
3 Maine's economy. With only a few weeks left
4 until the election, we are in a fight for
5 Maine's economic life. The letter goes on to
6 say, a large part of the problem has been
7 Maine's highest in the nation tax burden,
8 driven by out of control government spending.
9 One way to address that problem is through an
10 effective tax and expenditure limit such as
11 Maine's proposed Taxpayer Bill of Rights.
12 Such responsible public policy encourages
13 Maine business to remain in the state, uh,
14 thus creating more Maine jobs. And in
15 closing the letter says, in order to be
16 successful we are asking for your financial
17 investing. Your tax deductible contribution
18 can be made by returning the enclosed donor
19 envelope with a check. The Taxpayer Bill of
20 Rights is the only public policy in front of
21 the Maine voters where our legislators, uh,
22 that is guaranteed to reduce Maine's tax
23 burden and make sure the government does not
24 grow faster than the people's ability to pay.
25

1
2 It is a reasonable solution, uh, for Maine
3 citizens and I thank you for being part of
4 the solution in helping solve Maine's
5 economic challenges through your ongoing
6 investment in Maine's future. There's been a
7 lot of evidence submitted against the Maine
8 Heritage Policy Center on this issue.
9 Ironically I believe the most damaging piece
10 of evidence is something they submitted in
11 their own defense. This letter is an insult
12 to this Commission especially after Mr.
13 Billings and Mr. Becker's testimony about
14 what that, uh, Commission-mission of the
15 funding activities were. They blatantly
16 demonstrate that the Center was advocating
17 for TABORs passage and would lie in play with
18 only a few weeks until the election, uh, that
19 proves that they were raising money during
20 the campaign. Um, by making arguments that
21 their actions are protected under federal
22 statutes and that other groups may be at
23 fault as well, the Center is attempting to
24 draw attention away from their mistakes. The
25 fact however is that the Center violated

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2 Maine—Maine campaign finance laws and gave
3 incomplete and possibly misleading testimony
4 to this Commission in an attempt to hide its
5 activities. If the Center's actions are gone
6 unchecked and unpen—un—unpunished, similar
7 behavior could become a loophole used by
8 special interests wanting to secretly
9 influence referendums. If what the Maine
10 Heritage Policy Center did is allowed to
11 stand, why couldn't a think tank that
12 promotes veesonable[phonetic] gaming hide its
13 financing from Las Vegas casinos. Or a think
14 tank urging [Coughing] to changes to Maine's
15 environmental laws keep its contributions
16 from the oil and gas industries under wraps.
17 The Maine Ethics Commission exists to
18 safeguard the integrity of the State's
19 election process. It is extremely important
20 that you follow the recommendation of the
21 Commission staff and rule that the Maine
22 Heritage Policy Center should have filed a
23 1056(b). In addition, a full investigation
24 should be launched in the operations of the
25 Center, basing a value on its staff time

1
2 dedicated to promoting TABOR. Embodied in
3 the Center's fund raising activities since
4 authoring the legislation. This is necessary
5 because the Maine Heritage Policy Center has
6 shown that we simply cannot take them at
7 their word. And finally, uh, very briefly in
8 response to the staff's recommendation that
9 the Center is not a PAC, uh, I'm very well
10 aware that when I was here on the 31st I was
11 asked if, uh, Democracy Maine felt the Maine
12 Heritage Policy Center acted as a PAC during
13 the TABOR campaign. My answer that day was
14 no. Um, however after reconsidering this
15 question, reviewing new evidence and hearing
16 the arguments by Mr. Lindemann and Mr.
17 Branson, Democracy Maine has concluded that
18 the Maine Heritage Policy Center was a PAC.
19 And I think there's evidence, uh, I won't
20 repeat the--the arguments Mr. Branson just
21 made. I would say that the two letters, one
22 the form letter that was returned to Mr.
23 Briney Mary--uh, Briney had said we'll put
24 this towards our mission of promoting TABOR,
25 as well as this general fund raising letter,

1
2 uh, make it just incredibly clear that
3 promoting TABOR was their mission. Um, this
4 claim could very well be countered by
5 accusations that Democracy Maine was a PAC as
6 well. Uh, I do not believe this to be true.
7 I think if you—if you look back over 2006
8 you'd see that Democracy Maine became
9 involved in the fight against TABOR, when I
10 say involved I mean speaking to the press
11 and—and—and buying paid media in August, uh.
12 But if you look at the Maine Heritage Policy
13 Center's involvement, it started January of
14 '06 and they stayed involved. Um, if
15 however, as a result of the Maine Heritage
16 Policy Center being followed as a PAC,
17 Democracy Maine is filed as provider as a PAC
18 as well, I think right now we'd take that
19 chance. 'Cause one, is if it prevents, uh,
20 the recent behavior of the Center, we're
21 happy to make end. Uh, they took this
22 behavior of, of, influencing a referendum,
23 uh, while not filing to a new level. And it—
24 their mission since January '06 has been to
25 promote TABOR and I hope that you find it so.

HON. KETTERER: Thank you Mr. Crasnick.
Any comments, uh, Commissioner Thompson any
questions for the witness?

MS. THOMPSON: Can you come back to me--

HON. KETTERER: [Interposing] Sure no
problem. Mike?

MR. FRIEDMAN: Did the Maine Democracy
file a 1056(b)?

MR. CRASNICK: Yes sir. We came--the
past two deadlines we filed. Yesterday and
then November 1st.

MR. FRIEDMAN: Of this year.

MR. CRASNICK: Yes sir.

MR. FRIEDMAN: How long have you been in
existence?

MR. CRASNICK: Uh, about a year. About
a year and a half.

MR. FRIEDMAN: And these were the first
two deadlines? Or these are the first that
you--

MR. CRASNICK: [Interposing] These were
the first two deadlines that we've faced in
which we met the requirements. Having spent
more than \$1,500 to promote a referendum

question.

MR. FRIEDMAN: Okay. Did-I take it you sought contributions? Or not.

MR. CRASNICK: Yes sir. Yes sir. We, uh, we-we did not raise... uh, I mean we-we sought specific contributions for TABOR as well. I mean we raised money to do so, but we listed all those contributions in an independent [unintelligible].

HON. KETTERER: Uh, Mrs. Thompson back to you.

MS. THOMPSON: So. Um... first-two questions. The ten non-profits that you cited that are now shown as PACs, or have filed 1056(b)'s on the Commission website.

MR. CRASNICK: They're-uh, they're non-profits such as uh, Mr. St. John's group, uh--

MS. THOMPSON: [Interposing] So they filed--

MR. CRASNICK: [i] They filed--

MS. THOMPSON: --found that they filed 1056(b)?

MR. CRASNICK: --the November 1st

1
2 deadline, uh, there was—uh, there was
3 approximately 10 non-profits that filed
4 1056(b)'s, most if not all of them played
5 roles in—in trying to defeat TABOR.

6 MS. THOMPSON: And I was inferring from
7 your comments that you were attributing this
8 debate, which is going on regarding MHPC
9 before the Ethics Commission since October or
10 before, as having been an impetus for those
11 ten organizations to file 1056(b)'s?

12 MR. CRASNICK: I'm sorry.

13 MS. THOMPSON: Was I inferring wrong?

14 MR. CRASNICK: I don't understand the
15 question.

16 MS. THOMPSON: Do you think those ten
17 non-profits that filed 1056(b)'s were, um,
18 were influenced by the investigation, the
19 "investigation" about MHPC that has been
20 going on since October.

21 MR. CRASNICK: I can't speak to that.
22 I—I really can't speak to what those
23 directors of those non-profits, um, felt--

24 MS. THOMPSON: [Interposing] Okay.

25 MR. CRASNICK: I think you should—you

1
2 should ask Mr. St. John--

3 MS. THOMPSON: [i] Right
4 [unintelligible]

5 MR. CRASNICK: --why his group filed a
6 1056(b).

7 MS. THOMPSON: Okay.

8 MR. CRASNICK: All I can tell you is-is-
9 as I said on the 31st, when, um, we tried-
10 when we were thinking of getting involved in
11 the referendum, I spoke to Martha Demeritt
12 and said what do non-profits... what is
13 required of non-profits who get involved in
14 referendum questions. And I was told that if
15 you raise money specifically... for a
16 referendum and you spend over \$1,500 you need
17 to file a 1056(b). So my guess is that
18 Democracy Maine and the other groups that
19 filed knew that they were influencing that
20 question, knew that they had spent through
21 time or money, the use of, and thought that
22 they should play it safe and file-file the
23 form.

24 MS. THOMPSON: Sir I have another
25 question.

MR. CRASNICK: Sure.

MS. THOMPSON: Mr. Chair. Um... I'm—I'm hearing from the previous testimony that... um... that there has—that there is a court case that Mr. Branson cited, um, in Iowa--

MR. CRASNICK: [i] Okay.

MS. THOMPSON: --that--that said even though an organization did not form itself with the "major purpose" of influencing a ballot question, if that organization at some, within some tank-time structure, some temporal structure... and the discussion here was for the year prior to the--the November 6th, ballot, okay. Actually... spent a majority of the time, staff resources, etcetera influencing a ballot question, that organization therefore, according to what I think this law was saying, is--would in fact be, uh, a Political Action Committee and would be under the, the uh, relevant laws and so forth. Now in your testimony you said that Democracy Maine in fact, not since January, which you said is what MHPC took as its beginning point essentially to develop a

1
2 quote or express its "major purpose" for
3 defeating TABOR or for passing TABOR, you
4 said Democracy Maine began its strong effort--
5 I don't know if those were your words, but to
6 concentrate on defeating TABOR in August of
7 the same year. So... under what--well based on
8 the decision that we have to make and based
9 on this evidence from Iowa and so forth and
10 based on the fact that one, the--the--one claim
11 is that a "major purpose" developed in
12 January through November, your major purpose
13 on the other side of the question developed
14 in August through November, why are you not
15 also a PAC?

16 MR. CRASNICK: Well I think it goes...

17 MS. THOMPSON: And should you not be a
18 PAC.

19 MR. CRASNICK: Well that's what I just
20 want to--

21 MS. THOMPSON: [i] And why

22 MR. CRASNICK: --that's what I just
23 spoke to you and I think that--

24 MS. THOMPSON: --I know you said you--

25 [Crosstalk]

MR. CRASNICK: --Democracy was taking a risk by making that claim--

MS. THOMPSON: Exactly.

MR. CRASNICK: Okay.

MS. THOMPSON: You said you will accept being named a PAC if in fact you are. I'm trying to get an understanding of how should the Commission look at eight months of--if its major purpose--

MR. CRASNICK: [i] I think what I'd need to worry about is major purpose--

MS. THOMPSON: --versus.

MR. CRASNICK: --of the group. Democracy Maine is a--is a non-profit that was founded with the purpose of--of exposing and combating political extremism and its effect in the democratic process. And what we did was we were involved with some other issues in 2006 until about, you know, August when we--when we started looking at uh, rumors that money for TABOR--money that was being spent to promote TABOR, uh, was coming from out of state by, uh, groups such as Americans for Limited Government, um, you know, uh, it

1
2 wasn't—it wasn't, you know, Maine people that
3 it was a national movement. We wanted to
4 expose that, so that fell under our general
5 purpose and we started in August trying to
6 defeat TABOR. But you know, what—what—I
7 would—what I would say when you looked at the
8 Maine Heritage Policy Center, since January 1
9 of 2006... they have wanted to promote TABOR.
10 So as you've heard from Mr. Lindemann,
11 they're—they're—their activities have been
12 concentrating on saying how bad, you know,
13 taxes are and the economy in Maine and saying
14 how TABOR could fix all that. So I would say
15 that their mission since January 1 of 2000—
16 major mission since January 1 of 2006 has
17 been to promote TABOR by making all their
18 other activities demonstrate how it can help
19 Maine's economy and how bad Maine's economy
20 is. Democracy Maine was—a very wide range of
21 activities nothing to do with taxes, nothing
22 to do with the economy until we filed that
23 money from—money supporting TABOR was coming
24 from ultra-conservative national groups that
25 we wanted to expose in—in—in two to three

1 months before the election. I think there's
2 a difference between those two... those two
3 groups. And I don't know. I mean that's why
4 I said we're taking a risk in making this
5 argument because if deciding that the Maine
6 Heritage Policy Center was a PAC, it could be
7 decided that Democracy Maine was a PAC. But
8 I think my point at the end was that if it
9 could prevent that behavior from happening
10 again, with--with a group having that be their
11 mission and not filing anything, for that
12 long a period of time, then we would take
13 that chance. And you get that discussion out
14 the in the public.

16 HON. KETTERER: Um, thank you Mr.
17 Crasnick. Um. Kit do you want to make your
18 remarks at this time and about how long do
19 you think they would take?

20 MR. ST. JOHN: I would prefer to have
21 five minutes after both sides have presented
22 so--so to make the point that I was trying to
23 make--

24 HON. KETTERER: [Interposing] Okay.

25 MR. ST. JOHN: --before but--but I don't...

1
2 I don't regard myself as part of either
3 party--

4 HON. KETTERER: [Interposing] No I
5 understand that. I mean, just you were sort
6 of mentioned, you know, during that question
7 of the last presentation.

8 MR. ST. JOHN: I'm sure the Commission
9 will remember those remarks and I'll come
10 back to them.

11 HON. KETTERER: We'll try. Okay. Um,
12 yes.

13 [Off mic]

14 HON. KETTERER: Well we're going to have
15 one right now.

16 MS. THOMPSON: Oh. Okay.

17 HON. KETTERER: Uh, what, uh, uh, as I
18 understand, there's no one else in this
19 hearing room that would give testimony on-on
20 the complainant's side of this issue, is that
21 correct, any hands if that's not correct.
22 For the record I see none. Um... so what we're
23 going to do at this point, uh, is call a-it
24 turns out we believe we lose the hearing room
25 at 11:30, um, and so, rather wait until 11:30

1
2 and lose this hearing room, I think what we
3 ought to do now is switch to where we were
4 going next. Take a uh, ten minute--can we do
5 that in ten minutes, do you think? Can we
6 get that up in there in ten minutes?

7 MS. GARDINER: No.

8 HON. KETTERER: Okay. Uh, we're going
9 to take about a ten minute break and then
10 we're going to have a presentation by the
11 respondent's side which will not exceed 90
12 minutes and we'll also hear from, uh, five
13 minutes from, uh, Kit who is not here on
14 behalf of either party. Uh, there will be a
15 recess for ten minutes, thank you.

16 (Whereupon a recess was taken)

17 HON. KETTERER: In the second, uh, part
18 of our session of the Commission on
19 Governmental Ethics and Election Practices
20 and uh, we're now going to hear from the
21 respondent's side of uh, this complaint. And
22 for that purpose, we're going to turn to, uh,
23 counsel Dan Billings. Are you--are you making
24 some remarks or are we turning right to, uh...

25 MR. BILLINGS: Uh, I'm going to make

some very--

HON. KETTERER: [Interposing] Okay.

MR. BILLINGS: --brief remarks and then--

--

HON. KETTERER: [Interposing] For our record, uh, tell us, you're still Dan Billings, right.

MR. BILLINGS: Yeah. I'm Dan Billings. I'm here on behalf of the Maine Heritage Policy Center. Um, we're going to reserve the majority of our time to respond to any questions that any Commission and Commission staff, uh, have this morning on this. There've been all sorts of questions about our prior submissions and about factual issues. Uh, I think, um, the most important thing in my view for the Commission today is to, um, get any answers that--that you need in regards to those factual issues here this morning. So it's my understanding we have 90 minutes total and I'm going to try to uh, keep our presentation here at the beginning very brief so we can respond to whatever issues the Commission thinks, um, are

1
2 important. Um, Roy Lenardson is here today.
3 He was, uh, one of the primary people
4 involved with the Taxpayersbillofrights.com
5 PAC which actually ran the campaign in
6 support of Maine Taxpayer's Bill of Rights.
7 Um, during our presentation we'd like to
8 have, um, him come forward and, uh, speak
9 briefly. Uh, just to put in, um, context,
10 um, MHPC's activities in regards to the
11 actual campaign.

12 HON. KETTERER: I see that--thank you and
13 excuse me for one second. Are there other,
14 uh, members, uh, present who would be giving--
15 offering testimony on this side of this
16 complaint. Uh, Roy has been mentioned and
17 Bill? Okay. For the record I don't see any
18 hands so we're anticipating basically three
19 people counting yourself.

20 MR. BILLINGS: And we would certainly
21 consider that part of our presentation and
22 our time here.

23 HON. KETTERER: Okay.

24 MR. BILLINGS: I do think it is
25 important, uh, based on the presentation

1
2 you've heard this morning to... think about
3 what we're actually talking about here today.
4 Um, what we're talking about is whether Maine
5 Heritage Policy Center should, uh, have to
6 file with the Commission. I guess there's
7 two options. One is a Political Action
8 Committee, which, um, frankly I'm in
9 agreement with the staff's analysis of that
10 and I think if you were to follow the
11 approach uh, offered this morning, there
12 would be dozens of organizations that would--
13 that would fall under the PAC registration.
14 Uh, on the 1056(b) filing, we do have a--we do
15 have a difference of opinion with the staff--
16 staff view. I do think, uh, I do think
17 that's an arguable issue and we've said that,
18 uh, from the beginning. Uh... but we're not
19 talking about an organization that, uh, did
20 any of the things that were talked about in
21 regards to what people could do if--if the
22 Commission was to make one, uh, decision or
23 another. Uh, Maine Heritage Policy Center,
24 uh, sponsored no television ads. They
25 sponsored no radio ads. They sponsored no

1 mass mailings to voters. Uh, the sponsored
2 no newsprint ads. Uh, basically Maine
3 Heritage Policy Center's uh, involvement, uh,
4 uh, was in pure speech. Uh, staff members,
5 again, and we certainly recognize in their
6 role as aid staff of the organization went
7 out and spoke about their view on an issue.
8 Uh, they did that in public forums. They did
9 that in the media. Uh... they-as they do, uh...
10 as they do as part of their regular job.
11 Obviously we've never denied that they spoke
12 about the Maine Taxpayers Bill of Rights.
13 But that's all we're talking about here as
14 far as activities. And if the Maine Heritage
15 Policy Center was required to-to file
16 expenditures, the expenditures would be some
17 calculation of staff time and possibly some
18 travel expenses related to that. Um, and I
19 think... even accepting that something like-
20 part of the argument that something would
21 have to be reported, that's all we'd be
22 talking about is, um, that's all the Maine
23 Heritage Policy Center did, uh. And we're
24 not talking about advertising and uh, more
25

1
2 general uh... communications to the public and
3 to the voters that you usually think about on
4 the point of campaigns. And I think it's
5 important to focus on that and remember what
6 we're actually talking about. We're not
7 talking about this bigger issue of people
8 being able to run ads without being
9 accountable for them. That's not what's at
10 issue here. Um... so with that in mind, I
11 would, uh, turn it over to Bill Becker, uh,
12 he has a brief, uh, brief statement and then
13 we'd be glad to answer any questions.

14 HON. KETTERER: All right and uh,
15 Commission members at this point do you have
16 any questions for counsel? Mike?
17 Mavourneen?

18 MS. THOMPSON: Not right now.

19 HON. KETTERER: It sounds like he's
20 going to be here for a while anyway. Uh,
21 thank you, uh, attorney Billings. Uh, why
22 don't you state your name for our record,
23 please.

24 MR. WILLIAM BECKER: Good morning. My
25 name is Bill Becker. I'm the President and

1
2 CEO of the Maine Heritage Policy Center.

3 HON. KETTERER: And I understand you
4 have some prepared remarks you're going to
5 address?

6 MR. BECKER: Some prepared remarks, uh.
7 Uh, first I want to, uh, when we were here
8 October 31st, had the opportunity to uh,
9 describe the uh, work of the Maine Heritage
10 Policy Center, Mr. Cassidy you were not there
11 at that point so I'd just-would like to recap
12 that. Maine Heritage Policy Center is a non-
13 profit non-partisan research and education
14 organization whose purpose is to formulate
15 and promote conservative and free-market
16 public policies that will provide solutions
17 for the people of Maine. Over the course of
18 the past, uh, number of years, we are now
19 finishing our fourth year, we have conducted
20 research specific to the areas of our key
21 priorities, um, fiscal policy, tax policy,
22 uh, healthcare reform and education reform.
23 Um, I'm going to pass to you, but you can
24 pass them on down, some of the, uh, examples
25 of our work that we submitted a few weeks-a

1
2 few weeks ago... regarding the papers and the
3 policy reports that we do. I'll also
4 resubmit this to the broader Commission, uh,
5 this is just a, in the last, uh, eight weeks,
6 this is our six weeks since the, uh, uh,
7 since the Taxpayer Bill of Rights election.
8 The work that we've done and continue to do
9 on an ongoing basis related to, uh, the
10 economy of the State of Maine, personal
11 income, etcetera. We have focused since our
12 very early days in January 2003 on the notion
13 of what are some public policy solutions that
14 can aid the Maine ailing economy, the highest
15 in the nation tax burden. One of the
16 solutions that we brought forward, first and
17 foremost back in January of 2003 was the idea
18 of a tax and expenditure limitation law. We
19 thought—we thought it was a good idea then.
20 We think it's a good idea now. After the
21 election is over we will continue to advocate
22 that a tax and expenditure limitation that
23 puts some sort of brakes on spending by
24 government is a noble and good and—and uh,
25 uh, successful policy reform, uh, that's been

1 attempted in other states and has been
2 successful in other states. We will continue
3 to talk about it, have talked about it for
4 four years and will continue to talk about it
5 moving forward. Uh, to my prepared remarks,
6 uh, I will say this regarding the allegations
7 this morning. This is not the first time
8 that we've been involved with Carl Lindemann.
9 He first filed a complaint with the IRS in
10 early 2005 in an attempt to discredit us. He
11 wanted to know who funds the Maine Heritage
12 Policy Center. He thought it important that
13 the people of Maine know about the supporters
14 of a non-profit non-partisan free market
15 economic conservative think tank. But each
16 year, MHPC has filed with the IRS all the
17 necessary and legal documents necessary to be
18 a 501(c)(3). The IRS requires us to disclose
19 substantial donations annually on the 990
20 form. But the IRS does not disclose those
21 donations to outside parties much to Mr.
22 Lindemann's chagrin. I have in my possession
23 a letter from the IRS specifically stating
24 that they are, uh, pleased with the fact that
25

1 we submit our 990 and apologized for any
2 inconvenience that the inquiry in 2005 caused
3 to our organization. It was resolved. The
4 IRS found that we were not in violation of
5 anything that the IRS—I do also have a copy
6 of the letter that the IRS sent to Mr.
7 Lindemann explaining that they do not release
8 the names of substantial donations to outside
9 parties. That it is just done for tracking
10 within the Internal Revenue Service.
11 Unsuccessful with the IRS, Mr. Lindemann
12 brought his campaign against MHPC to the
13 Commission—to the Commission on the even of
14 this year's election. This campaign has
15 continued since the October meeting of the
16 Commission including apparently arranging a
17 contribution to MHPC in an attempt to prove
18 his baseless charges. Mr. Lindemann claims
19 to be interested in broader issues, but his
20 complaints have all been made against the
21 Maine Heritage Policy Center. He wrote—
22 raised no questions about similar
23 organizations such as the Ken-Katahdin
24 Institute or the Maine Center for Economic

1
2 Policy which both were engaged in express
3 advocacy against the Taxpayer Bill of Rights,
4 unlike the Maine Heritage Policy Center. Let
5 me address the recent allegation of MHPC's
6 accepting TABOR contributions specifically.
7 MHPC accepts donations that support our
8 overall mission, to research, analyze and
9 promote conservative and free-market public
10 policy solutions that will benefit the people
11 of Maine. We do not have segregated funds
12 for any public policy about which we are
13 researching. As an educational and research
14 organization we have donors who on their own
15 free will, will support different aspects of
16 our work. Some support our healthcare
17 analysis. Some support our data collection.
18 Some will come to support our education
19 reform efforts. This is very similar to a
20 school that accepts money from a donor that
21 sends it in and says please use this to
22 support your music program, or your athletic
23 program, or your science program. That's a
24 similar situation at MHPC. We have donors
25 who support different aspects of our work.

1
2 When we were first asked about our
3 contributors, we answered quickly and
4 accurately that we do not take any
5 contributions that are contingent upon any
6 action on the Taxpayer's Bill of Rights. I
7 did not, nor do I believe that any of the
8 donors who referenced TABOR in their donation
9 or notes, thought that they were getting a
10 lawn sign, a bumper sticker, or a political
11 ad. They were not getting express advocacy.
12 Instead they were supporting our ongoing work
13 on spending limits including research,
14 analysis and speaking publicly about Maine's
15 economy and the positive role that TABOR
16 could play. In fact, and not surprisingly,
17 there were a number of donors who knowingly
18 support MHPC's overall mission and who at the
19 same time made separate political
20 contributions to the Taxpayer Bill of Rights
21 campaign. We have never claimed that we do
22 not talk about TABOR. Of course we do. We
23 wrote the model legislation. We believe that
24 it would be a good policy solution for Maine.
25 We were in the media in 2004 talking about

1
2 this model legislation about the same time
3 that other organizations were expressly
4 advocating a known position on the tax gap,
5 otherwise known as the Pulaski [phonetic]
6 position, without filing the necessary
7 1056(b) forms. So even if four donors
8 referenced TABOR on their donations, they
9 were not supporting the initiative campaign,
10 nor the express advocacy of it. There was a
11 separate PAC organization, organized to
12 advocate the passage of the TABOR referendum.
13 Donors to MHPC were supporting our research,
14 our analysis and yes our educational efforts
15 regarding this specific spending reform
16 proposal. We just received a publication
17 from, uh, an organization that was writing
18 about the Maine Heritage Policy Center and
19 I'll just read this sentence to you. It says
20 MHPC, and this was a few months ago, is the
21 principal author and information source for a
22 pending citizen's initiative referendum that
23 would create a statutory Taxpayer's Bill of
24 Rights for Maine. And I think that's a fair,
25 accurate representation. We wrote it. We

1
2 were considered to be the experts on it. It
3 was a clear delineation when the press
4 called, if they called me, they knew—or any
5 of my staff, they knew that they were asking
6 a policy question about the impacts of a
7 specific section of the law, or what our
8 analysis was going to show. I remember a
9 case where a news anchor actually called me
10 and I can't remember if I was in the airport
11 or if she was in an airport, but we were
12 talking about a very specific section within
13 the law. It had nothing to do with the
14 campaign and the advocacy there, it was
15 talking about the law and what it meant. We
16 had a very limited time to respond to the
17 Ethic Commission request for information in
18 October. We answered the questions based on
19 what we knew about our operations. That we
20 did not solicit any contributions to support
21 activities related to TABOR, that we did not
22 segregate funds for TABOR related activities
23 and none of the activities were tied to or
24 dependant upon receiving contributions. We
25 never considered at that time that the

comment sent with checks would be considered information of importance to the Commission when such comments do not control how the funds were used. When the further additional issue was raised, we did review our contributions in 2006, and have since provided the information requested based on our more substantial analysis. I would point out that at this point no other organization that either did file a 1056 or did not file a 1056(b) has been asked to engage in such a review of their contributions. I'd be happy to answer any questions you might have.

HON. KETTERER: Uh, thank you. Uh, questions by Commission members, uh, do you have any?

MS. THOMPSON: Uh.

HON. KETTERER: How about you?

MS. THOMPSON: None [unintelligible].

HON. KETTERER: Okay. Uh, Vin?

MR. CASSIDY: I'm going to save [unintelligible].

HON. KETTERER: Okay. Mike?

MR. FRIEDMAN: Yeah I have some. Uh,

1
2 Mr. Becker... would you explain to me in 2006...
3 what other... uh, issues are out there which
4 MHPC addressed other than TABOR?

5 MR. BECKER: In terms of? Policy
6 issues?

7 MR. FRIEDMAN: The-the issues that you
8 normally would work to.

9 MR. BECKER: Uh, we had brought on an
10 economist, uh, starting in January, actually
11 January 1st, uh, who began to, uh,
12 significantly address the issue of Maine's
13 tax burden. Uh, Vice-President of Policy had
14 ten years of experience at the Tax Foundation
15 down in Washington, D.C. uh, and his role was
16 to come in and weed [phonetic] our policy
17 efforts and obviously he had a predisposition
18 to the tax and economic situation. Uh, and
19 so we began a series of publications, a
20 series of analysis looking at Maine's state
21 and local tax burden. We did an analysis on,
22 uh, income tax. We did an analysis on sales
23 tax. We continued to look at the tax burden
24 we fundamentally believed organizationally
25 that the tax burden is a driving force in

1
2 what is keeping Maine's economy down. Uh, we
3 did not have this person on our staff before
4 January 1st of 2006. Thus you would see a
5 great increase in the amount of research and
6 quality research, uh, being moved forward.
7 Uh, we continued to engage on issues
8 considered--uh, around Medicaid and DIRIGO
9 [phonetic]. Uh, Maine has the highest
10 percentage of its population on Medicaid--on
11 Medicaid of any state in the nation. Uh, we
12 continue to analyze, uh, the DIRIGO program
13 which, uh, since 2003, we believe was not a
14 sustainable financial model--

15 MR. FRIEDMAN: [Interposing] Did you
16 publish works on--

17 MR. BECKER: --we did--

18 MR. FRIEDMAN: --Medicaid and DIRIGO in
19 2006?

20 MR. BECKER: We didn't do--yes. Uh, um...
21 uh, those--and obviously you said other than
22 the Taxpayer's Bill of Rights, but obviously
23 we were, uh, looking at, uh, certainly how
24 spending limits would impact. We did a lot
25 of research, uh, additionally, uh, towards

1
2 the uh, towards the fall on entrepreneurship
3 and understanding how it affects
4 entrepreneurs that create jobs and
5 government, uh. Did a substantial piece on
6 entrepreneurship and how that will grow the
7 economy as well. Um, education has not yet--
8 has not taken a uh, uh, as tremendous a
9 forefront in our work as we did not have, uh,
10 a staff person dedicated to that. Uh, since,
11 uh, November we do now have a, uh, staff
12 person dedicated to education reform and
13 you'll begin to see additional pieces coming
14 out on the education side.

15 MR. FRIEDMAN: So in 2006 you had... uh at
16 least, as a view, uh, purposes involving
17 Medicaid, healthcare and obviously taxation.
18 How would you define for us, the term major?

19 MR. BECKER: Well let me just, uh, also
20 reference, uh, one significant publication
21 that's there on the top, the Maine Economic
22 Atlas was a long-time labor of love to
23 actually produce that piece and was a sig-I
24 would actually argue, uh, from a financial
25 perspective more time to have actually

published that piece than perhaps, uh,
anything else that we did. Uh.

MR. FRIEDMAN: How should we look at the
word major? Major purpose.

MR. BECKER: Um, our major purpose is to
advance free-market conservative, uh,
policies. I mean, that's--that--in context of
those issues that we--we look at. I mean
that's the major purpose of our organization.
That's the mission of our organization. I--so
I--

MR. FRIEDMAN: [Interposing] Was your
major focus in 2006 TABOR?

MR. BECKER: I would not say our major
focus--focus was TABOR--

MR. FRIEDMAN: [Interposing] Well.

MR. BECKER: --TABOR is a--TABOR was a
vehicle to get to lower taxes and restrain
spending but we looked at a broad variety of
issues surrounding economic growth,
development or the lack thereof within our
work.

MR. BILLINGS: I think this, to me, is
getting into a legal area here and I--I think

1
2 that the problem is trying to apply the
3 campaign finance statutes to organizations
4 that exist and have a point of view and speak
5 out on issues of importance. And... um, such
6 as Maine Heritage Policy Center and, um, I
7 think Jonathan's, uh, memo describing, um, a
8 uh, forum that Mr. Becker participated in,
9 uh, he mentioned in that that a lot of the
10 presentation was about, uh... the
11 organization's view of about general economic
12 conditions in Maine and--and things that were
13 seen as--as a problem in Maine. And I think
14 when you have an organization that's set up
15 to talk about those kind of things, and, uh,
16 an issue like the Maine Taxpayer Bill of
17 Rights comes along, if it's on the ballot,
18 it's only natural that that organization is
19 going to talk about the issues that they're
20 interested in, in context of that public
21 debate. And I think Maine Heritage Policy
22 Center is, uh, one of many organizations that
23 have done that kind of thing. Some of which
24 have filed a 1056(b) reports, some of which
25 have filed a PAC, some of which have filed,

1
2 um, uh, in-kind contributions to PACs. Some
3 of which have filed nothing. Um, and where
4 do you draw that line and that's why I argued
5 for a more bright-line test because it-it's
6 difficult when you're in the business of
7 talking about public policy issues and a
8 referendum question gets on the ballot that
9 doesn't all-in my view, that doesn't change
10 your organization. Um.

11 MR. FRIEDMAN: This may be difficult I
12 understand for a lawyer, but can you give me
13 a common sense definition of major?

14 MR. BILLINGS: I-I think to me it comes
15 down to why-um, why you're formed, and-and
16 what's your, uh, ongoing purposes. Um, and I
17 do think in response to some of the comments
18 that were made this morning... I do think it
19 would be within the, uh, Commission's um,
20 concern if you did have an organization that
21 appeared to be some sort of sham organization
22 set up to avoid the campaign finance laws. I
23 think that's something you could get at. So
24 some of the horrors that you heard this
25 morning if you-if you decide that MHPC is not

1
2 a PAC, you can do all these terrible things,
3 um, I think you can get at that with existing
4 law. Um, I—I don't think the facts here
5 support that, um, that conclusion. It's an
6 organization that, um, was in existence so
7 mainly for that same kind of thing before
8 2006 that it did in 2006. Um, and—and is
9 here now and will be in the future, um. And
10 I think part of it is when you're a—when
11 you're a public policy organization you do
12 react, um, to what's going on in the public.
13 And narrowing the debate on DIRIGO, um, MHPC
14 if you—if you look at what they were doing at
15 that time, uh, a lot of their discussion was
16 around DIRIGO and healthcare because that was
17 the issue of the day. That was what was
18 being talked about in the press and the
19 legislature and so forth. And... what the
20 emphasis may be is going to change with what
21 the issue, um... what the issue of the day is,
22 but I don't think that turns an organization
23 into a PAC just because a different issue
24 comes along.

25 MR. FRIEDMAN: So you're suggesting that

1
2 even though [Coughing] MHPC may be highly
3 interested in an issue during let's say a
4 campaign cycle, we really ought to look at
5 the large body--

6 MR. BILLINGS: [i] Yeah.

7 MR. FRIEDMAN: --of work.

8 MR. BILLINGS: And I think a good
9 comparison is the, uh, Maine Center for
10 Economic Policy. They did a lot of the
11 similar things that, um, MHPC did. And to
12 their credit, I certainly would recognize,
13 they filed a 1056(b) report and MHPC did not.
14 But if MHPC is a PAC, I would think the Maine
15 Center for Economic Policy would be a PAC. I
16 don't think either organization is a PAC
17 frankly, but, uh, they both appeared at
18 forums. They both talked to the media. It's
19 quite often not--and again, not just in this
20 issue, but it's quite often, if you listen to
21 public radio, you'll quite often hear on--on
22 different issues, you'll hear Mr. St. John
23 giving his point of view, representing his
24 organization. He would respond with Bill
25 Becker or Karen Bragden [phonetic] or Scott

1
2 Moody for MHPC. That happened in regards to
3 Maine Taxpayer Bill of Rights and in other
4 issues. I'm sure it will happen in the next
5 few months as things get going on the
6 legislature. Um, you know, those are
7 organizations with a point of view that are
8 involved in a number of different issues.
9 Um... and I don't think just because they get
10 involved in speaking out on a referendum, I
11 don't think that transforms the organization
12 into a PAC.

13 MR. FRIEDMAN: Mr. Becker, um, we had
14 some discussion this morning about Mr.
15 Briney's check. I'm sure you recognize that
16 name by now. And I think you just indicated
17 that we shouldn't be... uh, I guess overwhelmed
18 by the fact that you responded because the
19 letter contains no comment as to how the
20 funds are going to be used. That means you
21 wanted to give us the impression that these
22 contributions are now made, go into a general
23 fund and you spend them in accordance with,
24 uh, the purposes that you deem important to
25 the entity, is that right?

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MR. BECKER: That's correct.

MR. FRIEDMAN: You do acknowledge receiving that \$125 check.

MR. BECKER: I do.

MR. FRIEDMAN: Did you receive any others in addition to that one that you recall? Any other checks from other individuals?

MR. BECKER: During—we have hundreds of donors.

MR. FRIEDMAN: Okay. Were any--

MR. BECKER: [i] But if there were any that specifically referenced TABOR, as we filed before, uh, we found, uh, four checks that specifically referenced TABOR. With whom, I did not have a conversation with the contributor directly. Two additional checks with whom I did have contribution, uh, conversations with the donor directly under—and very well understood—they understood that our role was not as an express advocacy organization, uh. One donor said well I want to support some of your work, so keep \$500 of it, send \$2,500 back to the original donor.

1
2 Uh, and the other donor understood
3 completely. So four specifically was that
4 with whom I did not have a conversation with,
5 totaling \$975.

6 MR. FRIEDMAN: And did they all get the
7 same kind of letter in return as Mr. Briney
8 did?

9 MR. BECKER: Three got that letter and
10 two got a different letter with a hand
11 written note at the bottom of me-uh, from me.

12 MR. FRIEDMAN: Let me just read to you
13 one thing and I'd like your comment on it.
14 Well let-let me read the first paragraph. On
15 behalf of the Board of Directors, please
16 accept my sincere thanks for your generous
17 contribution of \$125 to the Maine Heritage
18 Policy Center. We are grateful for this
19 donation and will use it to advance our
20 mission of promoting the Taxpayer Bill of
21 Rights a solution that will benefit all
22 people of Maine. Was there any particular
23 need... to use the word promote? Uh, what-what
24 went into the-into framing the sentence in
25 that way. Because it looks to me like you

1
2 planned to spend that \$125 in promoting
3 TABOR.

4 MR. BECKER: Uh, the quick answer to
5 your question is regarding, um... uh, an
6 acknowledgement letter, whether it be any
7 organization, you try to acknowledge that the
8 donor has indicated a specific level of
9 interest. And ours, uh—it's let it—uh,
10 indicated a specific interest in our work on
11 the Taxpayer Bill of Rights. Uh, that letter
12 was then tailored and conformed to that
13 donor's specific, uh, message. I did not
14 know that the word promote was going to
15 become such a—such a word that we needed to,
16 uh, to look at so closely. Uh, but I would
17 say that the mission of the organization is
18 to formulate and promote... free-market
19 conservative public policies that will
20 provide benefit to all the people of Maine.
21 So promote was not a word that we had shied
22 away from, ever before uh, in terms of our—in
23 terms of our, uh, our work.

24 MR. BILLINGS: And—I think if you look
25 at Exhibit that was provided in Mr.

1
2 Briney's—I mean Mr. Lindemann provided again
3 this morning, the—the—the general fundraising
4 letter, um, uses in the first paragraph, the
5 second sentence, we are extremely grateful
6 for this donation. We will use it to advance
7 our mission of promoting free-market and
8 conservative public policy solutions that
9 will benefit all people of Maine. I think
10 what we have here is, the danger of cut and
11 paste in the computer age. Um, it appears to
12 me and that what happened here is a couple of
13 letters that were, uh, available digitally,
14 they were [Coughing] and pasted together to
15 come up with this fund raising letter without
16 a whole lot of thought about how somebody
17 might look at it in a proceeding like this.
18 And uh, I think most attorneys have run into
19 this, so, cut and paste problem with using a,
20 uh, pleadings that you make, you grab
21 something from another pleading and cause you
22 problems. And I think that promoting word is
23 in the general fund raising letter and what
24 happened here is that a change was made to
25 recognize the area of interest that the

contributor mentioned with the contribution.

MR. FRIEDMAN: So, you are in agreement with me though, that if you had the opportunity--

MR. BILLINGS: [Interposing] Oh.

MR. FRIEDMAN: --to review the letter of Mr. Briney you would have changed that first paragraph.

MR. BILLINGS: Absolutely. And I'd recog-and I said that to members of the press when this--this matter was first taken--uh, brought to my attention. Um, and I think, uh, this also supports or contradicts the idea that somehow this--our response is in, in and the way we've provided information to the Commission has been some sort of a clever, calculated, uh, strategy put together by me, um, I was so clever and calculated I think I would have dealt with this differently. I think frankly, I wasn't concerned about their fund raising letters, you know, this came to our attention, um, when it was brought to the attention of the Commission by others. And again, I wouldn't have sent the letter, um,

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2 actually even-though I'm not sure if I'd
3 looked at in August before anyone had raised
4 this issue about, um, maybe MHPC was a PAC if
5 it would have set off bells and whistles in
6 my head. Um... but certainly once the issue
7 came before the Commission and the
8 allegations were being made, if I'd looked at
9 it, the letter wouldn't have gone out. But,
10 you know, they're not running fund raising
11 letters or thank you letters by their
12 attorney but I don't think they really need
13 to. But certainly-it certainly gives an
14 impression that, um... I wouldn't want to give
15 and I don't think fairly represents what the
16 organization has been doing.

17 MR. FRIEDMAN: Are you familiar with
18 the, uh... the works of the Maine Economic
19 Research Institute?

20 MR. BILLINGS: Uh, generally.

21 MR. FRIEDMAN: Okay. Are you familiar
22 enough with what they do in comparing it to
23 this organization, to indicate to us whether
24 there are any differences, at least with
25 regard to 1056(b) filing?

MR. BILLINGS: Um. You mean—okay. As far as Maine Center for Economic Policy?

[Crosstalk, off mic]

MR. FRIEDMAN: MERI.

MR. BILLINGS: Okay. Well I don't—we've—MERI has filed either a 1056(b) or as a PAC.

MR. FRIEDMAN: I don't know.

MR. BILLINGS: No.

MR. FRIEDMAN: I was talking about the other--

MR. BILLINGS: [i] Yeah. And [Coughing] and though I—well.

MR. FRIEDMAN: Are there differences? If you know?

MR. BILLINGS: Um, well I do think there's differences in that they—they tend to focus on, um... legislator's votes on issues of importance. Where MHPC's work is on much more tied to the policy and not, um... the uh, the votes of specific individuals. I haven't seen any—any publication from MHPC that is talking—they certainly talk about issues but they don't say and so and so has voted this

way on the issue.

MR. FRIEDMAN: What you just explained was MERI, right?

MR. BILLINGS: Yeah.

MR. FRIEDMAN: What about the—I think you mentioned another entity that did file a 1056(b), uh, in your opening remarks.

MR. BILLINGS: All—all I know about their—their operations--

MR. FRIEDMAN: [i] Right. You identified—

[Crosstalk, coughing]

MR. BILLINGS: Right. From the Maine Center for Economic Policy, Mr. St. John, um, and the extent of my knowledge about the organization is what I see in the media and um, I certainly do not judge by going through that filter. But the thing I noticed in— during the discussion of the Taxpayer Bill of Rights, um, is they were often one of people speaking out against the, um... against the proposal. They were often put up as a counterweight to the Maine, uh, Center—Maine Heritage Policy Center, um. They appeared,

um, at forums as Bill did and other representatives of MHPC. Um, so I think in that way they were similar. I think if one... significant difference is that, um... Maine Center for Economic Policy, uh, expressly advocated a position on the bill. They told people that thought tax-TABOR should be defeated and people should vote no. And MHPC stopped short of that. I certainly understand the staff and maybe even some of the Commissioners don't see that as an important distinction but I—from our point of view it is important. But I think it's—it—to be fair, I do think a lot of the activities were—were similar. Obviously they didn't write the proposal. MHPC wrote the model legislation. So MHPC did not write the model legislation to be a referendum. MHPC did not engage in the activities necessary to put the referendum on the ballot. Um, I guess that would be a distinction. And the other way, uh, you know, Maine Center for Economic Policy did—didn't write the bill so that that is a distinction.

MR. FRIEDMAN: Thank you. That's it.

HON. KETTERER: Mavourneen? Questions?

MS. THOMPSON: Um... [unintelligible] on this question, you mentioned, uh, policy-- MHPC's uh, supporting DIRIGO this past spring that was...

MR. BILLINGS: [i] Opposing DIRIGO--

MS. THOMPSON: --I'm sorry, opposing, um.

MR. BILLINGS: --or specific parts of it.

MS. THOMPSON: We're--we're specifically dealing with ballot questions, are we not? Isn't that what was... isn't that what we're trying--

MR. BILLINGS: [i] Yes.

MS. THOMPSON: --to deal with? As opposed to--

MR. BILLINGS: [i] Yes.

MS. THOMPSON: --other things. Okay. Um...

MR. BILLINGS: The reason I raised that-- the reason I raised that point, is again, is to put the activities this year in context of

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2 the organization and history and the kind of
3 things that the organization has done in the
4 past and will do in the future. But I
5 certainly agree that your--this consideration--
6 --

7 MS. THOMPSON: [i] [unintelligible]
8 talking about--

9 MR. BILLINGS: --that's the one.

10 MS. THOMPSON: Um... I've heard, uh... Mr.
11 Lindemann and Mr. Branson basically, uh...
12 disputing, uh... MHPC's earlier testimony that
13 [unintelligible] that complained or asserted
14 that Lindemann, uh, had made several efforts
15 to investigate or to criticize or whatever,
16 the IRS, etcetera, etcetera, MHPC and so
17 forth. And--and--and you were saying also in
18 your brief testimony that--that they had done
19 this. That Mr. Lindemann has [Coughing]
20 several times etcetera. I--I frankly view,
21 um, that response by your side and the claim
22 by the other side is completely irrelevant to
23 anything we as a Commission have to decide
24 on. And--and I--I--because we can look at this
25 particular issue, not, um... someone's motives

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2 or past work, in terms of them making a claim
3 against MHPC. So, that said, I'm wondering
4 why you think that it's relevant to us... to
5 know that, or to believe or to accept from
6 you that Mr. Lindemann has "attacked" or uh,
7 asserted, uh, negatives against MHPC in the
8 past, several times. I'm wondering why you
9 think it's relevant to us to have that
10 information.

11 MR. BILLINGS: Well first it's-it-it was
12 raised in the initial submission to the, um,
13 to the Commission. Um, he raised issues
14 about whether MHPC was complying with federal
15 law and tax law and those kind of things.
16 So, uh, though I certainly agree that's not
17 within the Commission's, uh, jurisdiction.
18 It-it was raised by his-by his complaint. I
19 think the other issue that is-it is somewhat
20 relevant to the Commission is what he wants
21 to find out is where MHPC gets its money. So
22 that's why the focus this morning was on MHPC
23 having to be a PAC because even if the comm-
24 because if the Commission accepts the staff
25 recommendation and decides that MHPC has to

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2 file a 1056(b) report, based on the way that
3 law has been, uh, applied in other
4 organizations, the only contributions MHPC
5 would have to report would be specific
6 contributions such as the Briney contribution
7 and any similar ones. It would not have to
8 reveal all its financial activity. Um, and
9 other organizations that have filed 1056(b)
10 reports have certainly the position has been
11 taken—they've taken and I think that's
12 consistent with what the staff—

13 [END TAPE 1 SIDE A]

14 [START TAPE 1 SIDE B]

15 -um, is the staff's view. So I think...
16 while I disagree, I think there's a
17 reasonable argument to be made on the 1056(b)
18 issue, um, and we certainly have our view and
19 we've advocated that to the Commission. Um,
20 on the PAC issue, I—I simply don't—I agree
21 with the staff's recommendation. I don't—I
22 don't—I don't see that as a legitimate issue.
23 I think the reason it's being, um... it's being
24 advanced is because Mr. Lindemann—Lindemann
25 and his counsel is they have an issue with

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2 MHPC and--and the point of view it takes and
3 its concerns on how the money comes from
4 people out of state um, and they want to use
5 the Commission process to get at that issue.
6 Um, and again, the Commission's job is
7 related to the ballot measure. Um, it's not
8 the broader issue. So I--I do think... it's
9 putting that in context, um. And I do also
10 think it's relevant that, um, if he was just
11 interested in the broader issue, um, there
12 are other organizations such as the Katahdin
13 Institute, I think is the best one. It's a
14 non-profit, um... I heard them many times on
15 radio shows talking about why the Taxpayer
16 Bill of Rights should be defeated, um, and
17 [Coughing] found nothing. And that issue has
18 never been brought forward. It's been MHPC.

19 MS. THOMPSON: So--so, someone else's
20 motives could in fact be, um... result in a
21 larger policy--well decision or whatever than
22 the specific issue--

23 MR. BILLINGS: [i] Right.

24 MS. THOMPSON: --we're looking at. But
25 right now it's MHPC against who there's a

complaint.

MR. BILLINGS: Right. And I think--

MS. THOMPSON: [i] We need to look at that.

MR. BILLINGS: Yeah.

MS. THOMPSON: Let me ask you--

MR. BILLINGS: [i] And I do think the motive goes to... the very heated rhetoric you've seen from the complainant, um, in regards to this--

MS. THOMPSON: [Interposing] But our-our role is specifically looking for this issue. Not for someone else's motive, etcetera. Okay. So-so-so would subpoenaing information from MHPC, can that be accepted by you as an investigatory procedure and rather than be a punitive... requirement-a punitive procedure. Can it--

[Crosstalk]

MS. THOMPSON: --can it be accepted by MHPC as investigatory so that--and you were saying earlier that you had investigated your own records a little more clearly at the very beginning of this whole issue, a couple of

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2 months ago, you might have found that you
3 would have given different answers and not
4 that—and the other side is claiming that you
5 lied. That says you had a motive to lie.
6 What I'm saying is can the Ethics Commission
7 and staff... get firmer, clearly factual,
8 valid, reliable information. If in fact we
9 subpoena the information so that we can come
10 to a justified, uh, decision—decision.
11 Because in fact, we are going to be
12 affecting, one way or the other, many
13 organizations in Maine, uh, in terms of how
14 they operate and how they present themselves
15 in elections to come.

16 MR. BILLINGS: I think it would depend
17 on the scope of the subpoena. Um, if you...
18 uh, if you subpoenaed, uh, tried to seek all
19 of, um, MHPC's financial records as was
20 suggested this morning, um, we would have an
21 issue with that. Um, if you were to issue a
22 subpoena simply asking for contributions such
23 as the ones we've discussed this morning that
24 make any reference to the Taxpayer Bill of
25 Rights, that would an entirely different

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2 issue because that's something that I think
3 at least arguably is within the Commission's
4 purview. So it would depend on the scope of
5 the subpoena.

6 MS. THOMPSON: Okay. So another
7 question. Do you think, um, that Democracy
8 Maine, having said publicly that they
9 operated in a major way to defeat TABOR, as
10 of August into November, uh... would they
11 operate--were they--were they operating as a
12 PAC. What's your view of that?

13 MR. BILLINGS: Um... I haven't looked at
14 it enough to--to reach a conclusion on that.
15 Um, the thing that is interesting to me, is
16 that--and I have seen e-mails that they sent
17 out raising funds for con--to support their
18 TABOR related activities. I don't believe
19 that that, in and of itself, makes them a
20 PAC. Um, but they did do that. They did
21 report some contributions. It's interesting
22 to me that people have this morning--actually
23 even Mr. Crasnick pointed to MHPC's fund
24 raising letter that because of the language
25 used in that letter, that somehow transformed

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2 MHPC into a PAC. Um. If uh, if that alone
3 is all it'd take to—to make somebody a PAC, I
4 think Democracy Maine would be a PAC. Um, I
5 do know that Democracy Maine in, um... uh, 2006
6 was public on other issues such as, uh, uh,
7 the Alito nomination to the—to the Supreme
8 Court and they took public positions on that.
9 Um... I—I do think the, uh, information you
10 were provided this morning, that they started
11 their TABOR related activities in August is
12 incorrect. I won't accuse anyone of lying.
13 I think it's just an oversight on Mr.
14 Crasnick's part, but Democracy Maine in, uh,
15 April of 2006 filed a brief, uh, in support
16 of the, uh, action to keep TABOR off the
17 ballot. They issued a press release on that,
18 which we have. So their TABOR relate-related
19 activities did start um, uh, well before
20 August. Um... I believe the—the PAC, uh,
21 registration and, um, reporting requirements
22 are... can be quite onerous and are a
23 significant infringement on the freedom of
24 speech. So with that in mind, I—I'm not—I'm
25 not going to lightly suggest that some other

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2 organization that I don't, uh, represent, uh,
3 is-is a Political Action Committee because I
4 don't think that's an allegation that should
5 be made lightly. Um...

6 MS. THOMPSON: Is it-is it our role as
7 Commissioners and the Ethics Commission... to
8 try and enforce the laws that have been
9 written for this purpose. Is it our role to...
10 uh... make decisions on... freedom of speech.

11 MR. BILLINGS: I think it's an important
12 consideration for the Commission. Everything
13 you do, uh, has a relation to the-to freedom
14 of speech. And I was here at a Commission
15 meeting in October, um, concerning
16 allegations that had been made about the
17 Baldacci campaign and the, um, uh, Democratic
18 Governor's Association and other groups that
19 somehow, the fact that-that people have
20 associations somehow turn the activities into
21 illegal coordination. And I believe that it
22 was you Commissioner Thompson at that-at that
23 meeting that raised the issue that it seemed
24 to you that the information that had been
25 provided to the Commission on that day

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2 simply... related to people's freedom of
3 speech, even though people had, uh, might
4 have relations to different organizations,
5 um, that alone didn't create an illegal
6 coordination, uh, issue. And frankly I
7 shared your view on that issue. Um, and-and
8 I-so I do think, um, it's always a
9 consideration. And when you took your oath
10 of office here, you did take an oath to
11 uphold the laws of the State, but you also
12 took an oath to uphold the Constitution of
13 the State and the Nation. Um, again that
14 doesn't mean you need to accept my view on
15 the Constitution--

16 MS. THOMPSON: [Interposing] Right.

17 MR. BILLINGS: --but I do think it is a
18 consideration.

19 MS. THOMPSON: So I know that--that
20 bright-line of express advocacy debate, we--we
21 were referring quite a bit to, um, court
22 cases that were presented to us and uh, all
23 of us Commissioners did not agree, in terms
24 of--of our decision actually. But that
25 bright-line express advocacy seems to have

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2 been brought up by you also in this
3 discussion to say that you never went over
4 the "line" to say to vote yes to TABOR, or
5 support TABOR or whatever. That you didn't
6 say "say those words" and I think there was
7 testimony given to us from the—a radio debate
8 that Mr. Becker was involved in where he
9 agreed with his opponent who said but you
10 can't say vote yes on TABOR, etcetera. Do
11 you think that an organization can devote
12 two-thirds of its staff on travel,
13 organizational efforts and so forth, to the—
14 to promoting a ballot question and never put
15 in writing those—that phrase "vote yes for"
16 and not be expressly advocating?

17 MR. BILLINGS: My position is there
18 needs to be a clear line. And the only one
19 that I could find in researching it, that
20 seemed—that would apply was the direct
21 advocacy test. I certainly recognize the
22 problems with that test and um... the um... the—
23 how—how applying that faith test in certain
24 cases can be frustrating. So I'm not saying
25 that that's the only test that would survive

1 constitutional scrutiny, but from my review
2 of the cases, when you're talking about First
3 Amendment expression, you—if you're going to
4 start regulating that expression, such as
5 requiring reporting, you have to have a test
6 that, um, is not vague, that someone can
7 easily, you know, apply to their activities
8 and say, if I do this I have to report, if I
9 do something else, I don't. Uh, but the—and
10 again, it's in—it's—it's critical because
11 we're talking about fundamental First
12 Amendment expression that you have that test.
13 My concern about the 1056(b) uh, reports, is...
14 there is no good test. And I've had
15 discussions with staff about this, um, and I
16 think actually this might be an appropriate
17 time for me to raise this issue and I can
18 distribute this to the Commission. Trying to
19 get an understanding about if MHPC who's
20 going to file a 1056(b) report, as their
21 attorney, my concern was what do I tell them
22 to report. Um, in just looking at the law,
23 and looking at the—at the uh, pamphlet that
24 the staff has put together, doesn't really
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2 give any... good direction of that. And I-I-
3 again I... that has two issues for me. One is-
4 is a practical issue. I tell Bill hey we
5 should stop fighting about this, we should
6 just file the report. His next question to
7 me is well what do I file. I mean what do I
8 have to report. And I don't have an answer
9 to that and I have yet to see anyone give me
10 an answer to that. And that-I raise that
11 issue for two points. Number one is a very
12 practical issue. And number two is I think
13 it also gets to the constitutional issue
14 because, um, if you're going to tell people
15 they have to report, uh, the financial
16 activities that are related to their First
17 Amendment expression, then you have to tell
18 them very clearly, this is what you should
19 report. So what I've done, and it's-and it's
20 represented here, is I've looked at the
21 1056(b) reports that have been filed by the
22 organizations. And again in raising what's
23 been reported, I do not in any way mean to
24 criticize these organizations, suggest that
25 anything they've done is inappropriate

1
2 because frankly, they don't have any--haven't
3 been given any better guidelines than we
4 have. Um, if you go down through these
5 organizations, the one that... two issues stand
6 out to me. Uh, number one, it's interesting
7 the organizations that--that list no
8 contributions. And the one that really
9 stands out to me is AARP. They spent nearly
10 \$300,000 and they said we've got no
11 contributions that are directly related to
12 TABOR activities. That may very well be so,
13 but it does sort of stand out that you've got
14 \$300,000 on one side and--and nothing on the
15 other side of the ledger. But the one that
16 really stands out to me is--is--is of concern
17 to us with MHPC, where if MHPC was to report,
18 the vast majority of any reporting would be
19 staff time. Uh, again no one's come forward
20 with any allegation that MHPC ran ads, did
21 anything--that kind of activity which would be
22 how much time did Bill or others spent at
23 forums writing op-eds, that kind of thing.
24 And if you look through the different
25 reports, there's been very different

1
2 positions taken by these organizations about
3 what, uh, needs to be reported. The Center
4 on Budget and Policy Priorities, which is a,
5 uh, Washington D.C. organization that I guess
6 was involved in bringing people in from out
7 of state to speak against TABOR, they
8 reported staff time, but only staff time when
9 they had somebody on the ground in Maine.
10 They didn't report any staff time related to
11 what they might have done back in the office.
12 Um, looking at Maine Center for Economic
13 Policy, um, most--most of their reporting was
14 staff time. Um, looking at the reports and
15 also a letter that Mr. St. John, um, uh sent
16 to the Commission in response to a request
17 for comments, I believe I'm correct that what
18 they did is they, uh... they reported their
19 staff time on public presentations. Again,
20 not being related to research or analysis or
21 planning, uh, they reported the staff time
22 when they were out talking to the public.
23 And--and again, I don't criticize that, I
24 think that's a reasonable place to draw the
25 line, um... but I--I'm not sure there's anything

1
2 in the law that tells us where the line—that
3 the line should be drawn that way. Uh, if
4 you get down to AARP, again, they were fi—
5 they reported \$295,000 in expenditures. They
6 reported no staff time. So I guess we are to
7 believe that, um... they spent \$300,000 without
8 their staff being involved in any way in
9 deciding what they were going to spend, how
10 they were going to spend it. Um, and
11 Democracy Maine, Mr. Crasnick, um, here this
12 morning, uh, again they, uh, they reported
13 money they spent on ads, money they spent on
14 polling, money they spent on consultants, but
15 no time for staff spent on... putting together
16 any of those activities, writing press
17 releases and so forth. Uh, so, um, if we
18 were—if we were to, um... use this—if we were
19 to file a 1056(b) report and use the staff—
20 use the standard that Democracy Maine used in
21 their filings, I'm not sure what we'd report.
22 Um, so again this goes to, um, practical
23 concerns, and I think it also goes to the
24 constitutional problems with the law, that it
25 doesn't give people a clear standard of what

1
2 they need to report and what they don't.
3 And--and--and actually it's--in some ways it's
4 unfair to single out these organizations
5 because they have filed. And there are a
6 number of other, uh, organizations [Coughing]
7 that have been very active in the uh, in
8 different activities related to the Taxpayers
9 Bill of Rights that have filed nothing. Um,
10 and some of them, uh, maybe they didn't
11 trigger the \$1,500 threshold, some of them
12 I'm pretty sure they did.

13 MS. THOMPSON: So I--I appreciate that you
14 presented this because I know that--from my
15 point of view as a person on this Commission,
16 um, it seems to me that from this evidence..
17 and others--other evidence we've heard people
18 talk about, that whichever way our Commission
19 decides, on this particular complaint against
20 MHPC, we are going to open a hornet's nest.

21 MR. BILLINGS: Absolutely.

22 MS. THOMPSON: But once again, that's
23 for someone else to deal with, those hornets
24 that we release. We need to be responding to
25 the law as we are able to read it and

1
2 interpret it and we look at the specific
3 complaint against you, there will be--there
4 will be, um, facts and so forth on whatever
5 we decide on more organizations than merely
6 MHPC. Now I have one other question--

7 MR. BILLINGS: [Interposing] And just in
8 response that I do think it would be one
9 reasonable way to look at this evidence was
10 to--to decide that both the law and the
11 direction that's been given by Commissions in
12 the past, is such that you should look at
13 this issue, um... prospectively going forward
14 and not, um... looking back, um. One thing
15 that I've pointed out in other submissions is
16 I asked that the Commission staff to look at,
17 who filed 1056(b) reports in 2004. Um, I
18 knew there were a number of ra-organizations
19 that were active in opposition to the
20 Property Tax Cap Referendum. Apparently no
21 one filed any such reports. So I--if you
22 think you could look at the evidence and
23 decide yes we are charged with enforcing this
24 law, um, but there's problems with it.
25 There's been problems both with the way it's

1
2 written and its administration and we should
3 look prospectively to fix that.

4 MS. THOMPSON: So, um, I have another
5 question. Um... in terms of the Iowa, uh, law,
6 uh, decision that Mr. Lindemann and Mr.
7 Branson presented. That law basically—that
8 decision about the Iowans for Tax Relief,
9 basically said that... intentionally or not
10 intentionally, an organization can—can—can...
11 practice and state as its mission one thing,
12 and then actually act... in another way,
13 basically. So essentially an organization
14 can say it's a policy organization, it's a
15 non-profit, it's a think tank and then
16 evolve... into, uh, a Political Action
17 Committee because of, uh, because of other
18 circumstances such as a ballot question,
19 etcetera. Do you think that an organization
20 can be one thing and then because of
21 circumstances such as a ballot question being
22 introduced, can it in fact evolve into a
23 Political Action organization, in practice.
24 And I think that's what gets the point, the
25 question is exactly what is MHPC, during—uh,

1
2 within the last year.

3 MR. BILLINGS: I—I think hypothetically,
4 yes. The answer—I mean the general question,
5 yes. There are certain events that I think
6 could support that. Uh, I think there are
7 two things that are important, I mean,
8 looking at the Iowa case. Um, number one,
9 this was at the bottom of page five, it says
10 the Board of the organization in question
11 voted to amend the Articles of Incorporation
12 to delete the probate—the prohibition against
13 receiving and using contributions, incurring
14 debt for supporting or opposing a ballot
15 issue. So I think an important factor in
16 this case was the Board of that organization
17 took, uh, a definitive step to change the—the
18 organization. Um, also, the Iowa case does
19 not deal with the exact same definition of,
20 um, as used in Maine law. Um, I think in
21 applying the PAC definition, you need to do,
22 uh, what—an analysis which your staff has
23 done and apply the Maine definition to, um,
24 facts before you. Um, and—and I think in
25 particular the—the most important fact is

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2 what are the kind of communication and
3 activities that the—an organization is
4 related to. And you've had all sorts of
5 evidence, um, before you related to MHPC.
6 Um, and I think the staff has looked at—at
7 information and applied the—the definition in
8 Maine law, um, to reach the recommendation
9 that MHPC is not a PAC. Um, and... I think
10 that's—that's the kind of analysis you need
11 to—to do and um, but sort of theoretically
12 could you start out as not being a PAC and
13 become a PAC, certainly.

14 [Off mic]

15 HON. KETTERER: Any follow-up questions?

16 MR. FRIEDMAN: No.

17 HON. KETTERER: Okay. Vin?

18 JONATHAN WAYNE: I have one follow-up
19 question.

20 HON. KETTERER: Sure.

21 JONATHAN WAYNE: [Skip in audio] Sorry
22 for grilling you but I just wanted to go back
23 to the explanation you had about Dan
24 Billing's letter on October 26th, when he was
25 pretty categorical in his statement that, um...

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2 that the Center hadn't received any
3 contributions to influence, um, a referendum
4 campaign. Let me just read this sentences
5 again. The Maine Heri-The Maine Heritage
6 Policy Center does not solicit or receive
7 funds that are predicated on the Center's
8 taking a position on any issue and it has not
9 received, solicited, or received
10 contributions--any contributions to influence
11 the outcome of a ref-referendum campaign.
12 And that was following--that was in response
13 to a letter that I sent where--where I said
14 please clarify whether the Center has
15 received any funds from any source
16 specifically in connection with the TABOR
17 initiative. So, I mean, if you're aware, as
18 you said, that donors give contributions to
19 support different aspects of your work, why
20 be--I'm just want to see that the Commission--
21 you--you undertake to file a 1056 report, um,
22 I just want the Commission and--and the public
23 to know that you've shown the proper care in
24 submitting accurate information to the
25 Commission. So, um, why would you--I just

1
2 don't understand, um, why it would never
3 occur to you that when people say... great work
4 on TABOR, or mention TABOR in any way, isn't
5 that a contribution that's being given to
6 your organization well to--in connection with
7 TABOR-- ?

8 MR. BILLINGS: [i] Well.

9 JONATHAN WAYNE: --Well why wouldn't you
10 just be a little bit more--you haven't done a
11 necessary investigation or... almost
12 [Coughing], I mean I just don't understand.

13 MR. BILLINGS: Well--well first I wrote
14 the letter and--and influencing the outcome of
15 a referendum to me has--has meaning that may
16 not have the same meaning to you. But the
17 kind of questions that I asked, in preparing
18 that letter, was what did you do. What have
19 you been involved in, uh, related to TABOR?
20 Uh, and the kind of things that Bill
21 described to me... in my opinion didn't meet
22 the definition of trying to influence the
23 outcome of an election. Because I--I take the
24 view and... and that--that was telling people
25 how to vote, and um, specifically trying to

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2 influence the vote. Um, and I did
3 specifically ask at the time, um, have you
4 done, uh, you know, fund raising specifically
5 to support your TABOR activities? Do you
6 have a segregated fund to promote TABOR. Um,
7 then this issue of the Briney contribution
8 came up, I said okay. Hold on. You know, we
9 weren't looking at it the same way that
10 others were apparently looking at. Um, you
11 know, why don't you go back through all your
12 records and see if anybody else's donations
13 were kind of promised. And that's what we've
14 done. Um, but again, I... looking at some of
15 the other organizations and how they filed, I
16 wonder, you know, if AARP has ever gone
17 through and say, you know, geeze, has anybody
18 ever sent them a check saying I'm glad you're
19 fighting against the Taxpayer's Bill of
20 Rights. Maybe not, but-but I don't think
21 anybody's asked them that questions. They
22 filed a report saying that they received no
23 contributions. Um, I suspect that they look
24 at it the same way we do. That they don't,
25 uh, they don't have a segregated fund, uh,

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2 taking contributions specifically for
3 [unintelligible] activity.

4 MR. CASSIDY: Uh, the other question I
5 had was on this, uh... fund raising letter
6 that's dated October 18th, but which you said
7 wasn't sent out until after—I'm sorry did you
8 want to add something?

9 MALE VOICE: I was just whispering.

10 MR. CASSIDY: If you know, you described
11 it in your letter as a general fund raising
12 letter, but I noticed that the Taxpayer Bill
13 of Rights is mentioned in it in every single
14 paragraph. So I'm wondering... to the extent
15 you're willing to answer this, uh, did you
16 send out similar general fund raising letters
17 prior to the election, and—which have TABOR,
18 TABOR, TABOR mentioned, and if you got
19 contributions in response to these letters,
20 would it be fair for someone to think those
21 were contributions made to promote your TABOR
22 work, or... or would those be categorized as
23 general fund type of contributions.

24 MR. BILLINGS: Well I'll let Bill answer
25 the factual question about previous fund

1
2 raising letters. Uh... as far as the—but I do
3 think it's important that—to recognize that
4 that letter was—was sent to existing members,
5 um, I do think that, um, that's an important
6 contact that the law does, um, look at them
7 and communications in a slightly different
8 way, and [unintelligible] to the Center, sort
9 of a [unintelligible] of fund raising
10 activities. As far as other letters...

11 MR. BECKER: Yeah. Yeah I would, um... I
12 would say this. First of all that went to
13 our members. It was not a general—it—we
14 understand when the State says general fund
15 raising letter, a general fund raising letter
16 to our own members, uh, which I think clears—
17 makes a distinction in the law as opposed to
18 sending it out to a broader direct mail list.
19 Uh, second of all, uh, nowhere in there,
20 though we're mentioning it, obviously, I
21 mean, again, we were out there talking about
22 it because we thought it was a good idea
23 then. We think it's a good idea now. Um, a
24 lot of our supporters, a lot of our members
25 agreed with us and... what a better time to

1
2 raise money than when you're, uh, in the-
3 talking about it publicly. Obviously we are
4 out there invited to many forums, many
5 speeches that we were giving and-and-and
6 wanted to do that. Uh, it's not unique. Uh,
7 I have in front of me a nice letter from the
8 Maine Center for Economic Policy, May 30th,
9 2006, uh, in which, uh, it's more expressly
10 advocating a-a-a-uh, donation to support
11 their efforts regarding the Taxpayer Bill of
12 Rights. They may have only sent that to
13 their members as well. Um, but again,
14 organizations are out there talking about.
15 The difference is of course, we weren't
16 expressly advocating our position. Even in
17 that letter.

18 JONATHAN WAYNE: That's all
19 [unintelligible].

20 HON. KETTERER: Phyllis do you have a
21 question?

22 MS. GARDINER: I do [unintelligible].

23 HON. KETTERER: Well why don't you ask
24 and then help the Commission in its work
25 instead of...

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2 MS. GARDINER: [unintelligible] Well
3 it's not helpful [unintelligible]. You
4 mentioned, um, Bill, that you have hundreds
5 of contributors, [unintelligible] what I'm
6 trying to get at is what effort did you
7 actually undertake to review [unintelligible]
8 contributions received [unintelligible]
9 whether, um, Bill [unintelligible] to
10 targeted [unintelligible].

11 MR. BECKER: The arrival of the Briney
12 information brought by our friends, uh, in
13 the media, um, that morning a few weeks ago.
14 Um, we undertook to review all contributions.
15 Uh, and go back and check checks and not only
16 just checks, um, but also go find the actual
17 donation envelopes and find if someone
18 actually--what someone said on the actual
19 donation envelope. That's the review that
20 we've undertaken.

21 MR. BILLINGS: And you're also--I believe
22 you're reviewed--

23 MR. BECKER: [i] Every thank you letter
24 that went out. As well. Right [Coughing] I
25 mean they're all on individual donors.

[Coughing]

MR. BILLINGS: I'm not sure how we got either the four or the six that we talked about, um.

MS. GARDINER: And did you, um, when did the October 18th, letter go to the members for fund raising.

MR. BECKER: It appears to have gone after the election. Um, the only reason I know that is because mine arrived after the election. Um, there was a problem with the mail house. Apparently there was lots of mail going out, um, right before the election and... every reg-everybody that we talked to, uh, has said, hey did you know we got a letter after November 7th.

MS. GARDINER: Uh, your intention was to get it out before--

MR. BECKER: [i] Sure.

MS. GARDINER: --did you get it to a mail house?

MR. BECKER: To our-to our, um, we got it to the printer. And then they were moving along the process.

MS. GARDINER: Do you know when you got it to the printer?

MR. BECKER: Um, October 21st.

MR. BILLINGS: The intent obviously was to get it out before the election.

MS. GARDINER: And did you--have you given the Commission copies of all of the fund raising letters you've given to other folks. Uh, if you haven't, that [unintelligible] the Commission members would be, information would be, or [unintelligible].

MR. BECKER: I believe we have. I'd have to back and see what sort of fund raising letter--I mean you're talking about direct mail to our members within--

MS. GARDINER: [i] Any--to any audience. And then--

MR. BECKER: --I'd have to go back and look, again. I don't have--

MS. GARDINER: [i] So to this point you haven't--

MR. BECKER: --made [unintelligible].

MS. GARDINER: You just submitted that

category.

MR. BECKER: If we were asked, we would be happy to go back, uh.

MS. GARDINER: Um, in-so I take it from your review of the contributions, were there any contributions you received that you turned over to the PAC, contributions of any sort?

MR. BECKER: No.

MR. BILLINGS: And I think that's an important distinction that maybe there's a misunderstanding about my place in that. Frankly, if MHPC did get contributions and pass them on to that, that would be an issue. What happened in the case of, uh, the one donor, is Bill knew that donor and was concerned that the [Skip in audio] donor might be, um, confused about the different roles. So Bill called the donor, explained there's a separate organization that's running the campaign, this is what we do. Um, and the donor said oh, well send a-you can keep \$500 to support that work, send me back the \$2,500. I mean we assume that he

1
2 may have made a donation to the--to the PAC,
3 but we haven't done [unintelligible]
4 researched it and Bill didn't pass along the
5 money, it went back to the donor. Once it
6 goes back to the donor, the donor's money,
7 they can do what they like with it. I don't
8 think that, um, makes, uh, MHPC a transfer
9 mechanism that was suggested this morning.
10 And frankly I think it shows that a non-
11 profit is concerned about, um, making sure
12 that the donations that it accepts, um, were
13 intended for that organization.

14 MS. GARDINER: And is that the only
15 instance you came across in your review of
16 the records?

17 MR. BECKER: It was in addition--there
18 was one other, uh, donation in which, uh, I
19 had--actually called the donor, um, given the
20 size--it was a \$1,000 donation. Called the
21 donor, uh, had a conversation with the donor
22 about our role and the donor fully understood
23 what our role was as opposed to a PAC's role.

24 MS. GARDINER: [Inaudible, background
25 noise]

MR. BECKER: They supported our research work and then [Skip in audio] work.

HON. KETTERER: The MHPC work.

MS. GARDINER: So you kept the donation.

MR. BECKER: Yes. Correct.

MR. BILLINGS: And--and that's also is discussed in my December 4th letter. It's not a new contribution that we haven't provided before.

MS. GARDINER: Okay. And [unintelligible]. Um...setting aside your arguments about express advocacy, for the moment [unintelligible]. Express advocacy is not relevant to the determination of the allegation initially reported [unintelligible] subpoena. Um, do you acknowledge that MHPC made expenditures in 2006 to promote or to influence TABOR, as a ballot question?

MR. BECKER: I guess my questions would be to define an expenditure. Would be--what is the definition of expenditure. Looking at the 1056 (b) reports that were filed, it--and understanding that certain organizations

1
2 [Coughing] leaving one of them that were
3 holding forums, I was debating them. They
4 were attending events and forums. So we
5 didn't spend any money. I-I had nothing to
6 point to.

7 MS. GARDINER: I'm not asking you to-I-
8 I'd like you to-prior to answering my
9 question, to know what other organizations
10 did. They may or may not have reported
11 appropriately. Um, but I'm just asking
12 whether if you-if you leave the express
13 advocacy test out of it... um, and you go with
14 the language of 10565(b), expenditures for
15 the purpose of promoting or influencing in
16 any way a ballot question.

17 MR. BILLINGS: Then you also have to
18 look at 1052--

19 MS. GARDINER: [i] I understand-I did--

20 MR. BILLINGS: --at the definition
21 that's--

22 [Crosstalk]

23 MS. GARDINER: Yes. I'm-I'm--

24 MR. BILLINGS: [i] It's basically asking
25 that--

MS. GARDINER: --I'm just--

MR. BILLINGS: --a layman can't make a legal conclusion.

MS. GARDINER: I'm only asking--actually what I was asking you simply whether [Sneeze] the organization, um... represented by--and Bill, either one of you can answer, acknowledges that, under expenditures to, even if you didn't expressly advocate, if you made expenditures to promote or influence TABOR. I'm simply trying to understand if we have a dispute about this. It could be a factual dispute. It could be a legal dispute. I'm [inaudible] simply acknowledge there's something to dispute.

MR. BILLINGS: Well my problem is I don't know [Coughing] where to draw that line. Um, I do think someone could--I mean we've been forthcoming about what MHPC has done. And I think it--it, I mean--I think someone could look at that and--and reach that conclusion. Um, that's not the conclusion that we reach because MHPC sees all--all its activities in 2006 for the purpose of

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2 advancing its, um, overall mission. Um... but
3 I think that's-um, somebody else could, um...
4 look at those activities and reach a
5 different conclusion. But it wasn't the
6 purpose of MHPC activities to try to
7 influence the way people voted on the
8 referendum.

9 MS. GARDINER: Is your position is very
10 different from how people who are donors
11 [unintelligible]?

12 MR. BILLINGS: Obvious-obviously Bill
13 said that he thought was a good idea. They
14 continue to think it's a good idea but they
15 stopped short of telling people how to vote.

16 MS. GARDINER: So your [unintelligible]
17 express it, your position.

18 MR. BILLINGS: Well. I-I think if you
19 look at 1052, it talks about, um... it talks
20 about promoting the passage or defeat of a
21 referendum question in the expenditure
22 definition and I think that-uh, and the exact
23 same language is express advocacy, but it
24 certainly implied that you're telling people
25 how to vote. It's taking a-you're taking a

1
2 clear position.

3 HON. KETTERER: Anything else folks?
4 Uh, Commissioner Thompson, back to you.

5 MS. THOMPSON: Yeah. Uh... uh, the
6 Commission received and I think it's
7 available to the public as well, an Exhibit
8 from Lindemann and Branson regarding, uh,
9 what they said is a journalistic, um analysis
10 of activities and so forth con-connected to
11 what policy was trying to be influenced or
12 discussed or etcetera, etcetera. On this
13 particular paper, and the conclusion
14 [Coughing] uh, close to 66% of your time,
15 staff time etcetera, in 2006 was devoted to
16 influence, uh, the passage of TABOR. Can you
17 respond to this, uh... in some way other than
18 merely disagreeing with the finding?

19 MR. BILLINGS: Yes I think that's a-the
20 first thing-I tried to figure this out, it-it
21 loses me. But, um... this is an analysis of
22 press releases and even if it's accurate, the
23 press releases or analysis of the press
24 releases does not, uh, represent an analysis
25 of the organization's overall work. Um, this

1
2 is only one out-aspect of the organization's
3 activities during 2006. So, he's—for the
4 purpose of your question accepting that it's
5 accurate, I don't know if that's true, but,
6 it's only part of the-of the organization's
7 activities.

8 MS. THOMPSON: Um... do you think that the
9 finding is accurate in terms of your overall
10 activities for that year? Even though it's
11 only an examination of press releases?

12 MR. BECKER: I don't.

13 MS. THOMPSON: Why?

14 MR. BECKER: Because we were engaged in
15 a number of significant policy reports, um,
16 those would be folks working on healthcare or
17 the folks working on personal income, or the
18 folks working on migration studies or the
19 folks working on the atlas, or the folks
20 working on, uh... any number of issues that we
21 were engaged in. Um... I don't know—I've never
22 broken down the time as—as for what one man
23 has chosen to do. Um, but I would not say
24 that's an accurate representation of the
25 time, and I would—I would uh... argue that the

1
2 staff would probably concur with that.

3 MR. BILLINGS: This might be an
4 appropriate time to have Mr. Lenardson come
5 forward as part of our presentation. And
6 he's going to be brief, but just to put in
7 context th other--the actual campaign, um, I
8 do think--

9 HON. KETTERER: [i] All right. Uh, let
10 me--let me just uh... ask a question or two
11 myself--

12 MR. BILLINGS: [i] Oh.

13 HON. KETTERER: --[unintelligible] and
14 I'll be uncharacteristically brief. Uh,
15 isn't the problem of proving some kind of
16 formation task when you look at these things
17 that--that something that could be formed in
18 2002 for a particular purpose and then in
19 2008, something else comes up that wasn't en-
20 reasonably envisioned in 2002 and so you--you
21 sort of say well, we weren't formed for that
22 purpose. So, so we--we're--we're free to go do
23 whatever we want. It--it--isn't that sort of a
24 problem, counsel?

25 MR. BILLINGS: Yes. I--I mean I think

1
2 that's something the Commission came up to
3 ask, um, I think in the—but I do think it's
4 important in the consideration of MHPC that
5 looking at the history and the track record
6 of the kind of things the organization has
7 done, that the—the fact that a referendum
8 campaign comes along that an organization
9 gets involved in, and I don't think that in
10 of itself, uh, makes the organization a PAC.

11 HON. KETTERER: Um. Well that in and of
12 itself doesn't, but—but what is to stop a
13 group from forming in the year 2000 and then
14 picking the, uh, sort of flavor of the uh, of
15 the biennium, and in '04, and '06 and '08 and
16 ongoing and saying well, we look back over
17 the years we've been involved in a number of
18 different campaigns. You just happen to be
19 focusing on '08 because, you know, there's
20 something wrong with you. You're looking at
21 '06 because you know, you don't like my
22 group. You complained to the IRS about me.
23 Uh, and we're saying, well no, we're looking
24 at your group because you're putting an awful
25 lot of your effort and your time into

1
2 influencing the outcome of what this is going
3 to be and you simply say, not really, we just
4 want to make information available to the
5 public by, you know, but-but-but somehow by
6 saying well, this is the proponent in the
7 debate, and so on and so forth, it's a-
8 undercuts the notion that's just saying I'm
9 just disseminating neutral information and
10 that an informed electorate is a good
11 electorate. And there's-I mean I have
12 problems with that because it doesn't seem to
13 fit. But... uh, having said that, um, the last
14 thing I want to comment is because there's
15 been a fair amount of discussion on both
16 sides of the issue here about, uh, you know,
17 this chart for example that shows, you know,
18 what ten filers, uh, for 2006 did under the
19 provisions of 1056(b), uh, or just oral
20 testimony that was given regarding, you know,
21 uh, if you find this way then that means thus
22 and so for the future and the like. And um,
23 uh... you know, I don't think that the
24 Commission is singling out this particular
25 group. We got a well, uh, written complaint

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2 that gives us a good reason to take a hard
3 look at the group that's before us. Now, the
4 simple fact that other groups may be
5 similarly situated, that's interesting. But
6 we have a very small staff here, as a matter
7 of public record. Um, and uh, you know, it's
8 a complaint driven system. So you could have
9 two people that by analogy live next door to
10 each other and are in say-uh, both of these
11 families went through the tragedy of divorce
12 in front of the same judge on the same day,
13 and-and both fathers of children are ordered
14 to pay child support, uh, in roughly the same
15 amount of money based on their income. And
16 in hearing to it, one-one of the fathers says
17 you know, I'm kind of out of work right now,
18 will you sort of let met slide for five or
19 six months until I find work, and that former
20 spouse says on behalf of my children, yeah,
21 that's okay with me. And... the other
22 individual's in the same situation and that
23 spouse says the first Friday that you're one
24 payment short, I'm going to cite you for
25 contempt. And the one guy ends up going to

1
2 jail for contempt and the other person rides
3 along for six or seven months and in a year
4 or so into it, they make back the money that
5 they owed and everything turns out fine. So
6 you know, this is really a horrible system
7 because two people who were similarly
8 situated in front of the same judge, in the
9 same court, one guy, uh, gets to take six
10 months off from his payment, the other guy
11 goes to jail for doing the same thing. It's
12 really an unfair situation. It's a complaint
13 driven system. So thence the notion that
14 somehow the Commission is sort of focusing on
15 this group because it's um... you know... free
16 independent right-wing thought or whatever,
17 you know, the analysis is, I just think it
18 doesn't have any basis at all. And you know,
19 I appreciate the charts and all that stuff,
20 but I just think you've got to understand,
21 we—we've got a legitimate complaint that's
22 come to the Commission and we're in the
23 process of hearing it. We're not—we don't
24 have any axe to grind with anybody. We're
25 just, you know, uh, hearing it and simply

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2 saying well, you know, it's interesting that
3 these people put this down, maybe-maybe they
4 were wrong for putting down what they put
5 down. You know, maybe they're-maybe there
6 should have been 30 filers and there's only
7 10. There's 20 other groups that haven't
8 even met the minimum requirements of, uh,
9 1056(b). So again, that's my statement on
10 the record. It's not really a question. Do
11 you want to respond to it?

12 MR. BILLINGS: Yeah. I raised that
13 issue, number one. I haven't, I don't think,
14 any of my filing, and I tried to be careful
15 when I spoke to the press that, um, I do
16 believe that Mr. Lindemann has an axe to
17 grind, but I haven't questioned at all the
18 Commission's actions or the Commission's
19 staff's actions in looking into this
20 question. I think it's entirely appropriate.
21 I think it's within your purview and I have
22 never questioned any of the actions you've
23 taken. As far as raising the other filers, I
24 do think that's relevant because I think it
25 illustrates that the law is vague in that

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2 the--the Commission and the Commissioner's
3 staff haven't given clear guidance to people
4 who have filed, or other organizations that
5 might have to file. And my question is--is
6 if--is if the Commission, um, if the
7 Commission decides that MHPC, um, has to file
8 a 1056(b) report, um... my question on behalf
9 of MHPC is what are we required to file. And
10 I--that's just a pract--I think it's a
11 constitutional issue as far as vagueness, but
12 more importantly, I think it's a practical--a
13 practical question because if we do--if you do
14 decide we have to file and we decide to file
15 and not--not challenge the decision, I don't
16 want to have them file something that we're
17 back here next month saying, well you haven't
18 done it right. You didn't--you didn't--you
19 didn't file everything--

20 HON. KETTERER: [i] That's a point well
21 taken.

22 MR. BILLINGS: So, and I--and I raise
23 those other filers because those other filers
24 and again, I'm not critical of any thing any
25 of those people have done because they have

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2 the same problem we do, those other filers
3 have taken different view of the law, which
4 is apparent from the records on file with the
5 Commission, that there's no clear standard
6 that's been applied to all--that those
7 organizations have complied and they've drawn
8 lines. They probably and some of them
9 probably the same way I would draw the lines
10 if I was in their position. But... we don't
11 know how--we've driven the line, we don't have
12 to report. We--we're being criticized for
13 that. What I'm pointing out is other people
14 have driven--have drawn the line differently.
15 And if the Commission decides that MHPC has
16 to file something, um, we do need some
17 guidance as far as what to file.

18 HON. KETTERER: Uh, and that's a point
19 well taken. Why don't we hear from, um, Roy,
20 uh, do you want to come up--

21 MR. BILLINGS: [i] I'll be--

22 HON. KETTERER: --and state your name
23 for our record.

24 MR. ROY LENARDSON: Uh, my name is Roy
25 Lenardson. And I was involved with the

1
2 Taxpayer Bill of Rights.com PAC and I just
3 simply wanted to, um, lay out what did-did
4 occur, um, just to give you a little bit of
5 perspective. We had a little over 900 donors
6 about-raised more than \$400,000. We maintain
7 an office, website, phone numbers. We hired
8 staff, one full-time, two part-time. We have
9 about 250 active volunteers that regularly
10 participated in what we did. We hired TV ad
11 producers, we produced six TV ads. We hired
12 a buyer for the TV ads. We paid a designer
13 and paid a mail house for the, um, mailings
14 that we did. We did several, uh, targeting
15 mail features. We paid a design shop for
16 newspaper ads and placement. We had our own
17 treasurer who maintained all the bank records
18 and transactions and specifically for the
19 purpose, we did fund raising letters. Um,
20 and our staff and volunteers participated in
21 more than 100 debates and other speaking
22 engagements. From our perspective we were
23 all about the campaign, um, and I just wanted
24 to make it a little bit more clear while the
25 activities of MHPC participating in forums is

1
2 really interesting, uh, it was horrifying to
3 people in the campaign because it was an
4 endless chat and we were all about raising
5 money to get TV, newspaper ads, and out to
6 the public and the debates were touching but
7 that wasn't really what we found to be
8 helpful for the campaign and... we did lose and
9 I'm here celebrating that--

10 [Laughter]

11 MR. LENARDSON: --and that's all, that's
12 all I just wanted to lay that out to you so
13 you know that's what we do.

14 HON. KETTERER: Thank you for your
15 comments Roy. Um, questions for the witness?
16 Vin?

17 MR. CASSIDY: No.

18 HON. KETTERER: Mike?

19 Mavourneen?

20 MR. LENARDSON: At this point--I just
21 want to add just one quick thing that I would
22 relate to that, having done PACs now for ten
23 plus years, um, there is a trend that is
24 coming down that we're going to see more and
25 more of and it's the notion of the C-4, the

1
2 527, all these different types of
3 organizations that open up shop and pretend
4 to be interested in one or two or three
5 issues. It's on the right, whether it's the
6 guns, it's on the left as well. And I don't
7 think the current laws are capturing that and
8 I-I'm very concerned about whether Kit's
9 group or Bill's group, those are 501(c)(3)'s
10 that contribute to the fabric of this state
11 and are important. I think sort of getting
12 dragged and trying to create this one size
13 fits all from very real C-4 527 issues that
14 you're going to face increasingly, as
15 especially in the '08 election cycle, versus
16 the 501(c)(3) people that are going to be
17 here year in, year out. I think there's a
18 problem and I realize you're starting to
19 confuse state laws and federal laws and all
20 the different designations but I-I think it's
21 an important distinction you've got to make
22 as you guys deliberate just going down the
23 road.

24 HON. KETTERER: Thank you Roy. Um,
25 you're the first to talk. Um... Dan do you

1
2 have anybody else here-- ?

3 MR. BILLINGS: [i] No.

4 HON. KETTERER: --that would--that would
5 confirm? Okay.

6 MR. BILLINGS: And I think we've had an
7 ample opportunity to make the points I
8 thought we needed to make this morning and
9 we'd be glad to do the same thing, with our
10 time, to answer any questions from the
11 Commission.

12 HON. KETTERER: Okay. Um... I wonder if
13 this would be an appropriate time, since it's
14 uh, 10 of, to, um, maybe you want to hear
15 with Kit St. John has to say, um. We're not
16 closing the record or the evidence in the
17 case. We're just going to turn to people who
18 want to offer information that is neither,
19 uh, for or against the, uh, the respondent or
20 the complainant. If you want to come up?

21 MR. ST. JOHN: Thank you Mr. Ketterer,
22 members of the Commission, first of all I
23 really want to thank you all for the people
24 of Maine because you're all volunteers and
25 you're putting in a lot of time for very

1
2 complex matters. So I appreciate that. Um,
3 I am Christopher St. John, the Executive
4 Director of the Maine Center for Economic
5 Policy. We are a small non-profit research
6 organization dedicated to advancing policy
7 solutions that support broadly shared
8 economic opportunity and prosperity. Some
9 people think that the free market is going to
10 distribute goods and services well, it's not
11 our view. Uh, we believe that government is
12 in place to, uh, uh, in some ways, to-to
13 offset the problems that free markets create.
14 I think free markets are wonderful. But they
15 don't address the distributional problems and
16 so that's our particular focus, is just
17 addressing additional problems that the
18 market does not address very well. Um... when
19 this Commission--when this, uh, complaint was
20 first--I appreciate the Commission allowing me
21 to present independently of either of the
22 parties in the case. When the complaint was
23 initially filed, uh, late in the campaign site-
24 campaign cycle, naturally I was interested in
25 the sense of a reader of newspapers and

1
2 someone involved in a campaign to hear
3 something that was really quite relevant to
4 that campaign. But I didn't intend to
5 participate, um, because I thought it was a
6 complaint about a specific organization that
7 I didn't have much particular knowledge
8 about. But, uh, why I'm here is because
9 people out-the Executive Director of the
10 Commission wrote letters to many parties, I
11 take it, probably the filing organizations
12 and maybe some others, uh, asking for
13 comment. I wrote a brief letter,
14 subsequently had conversations with both Paul
15 Lavin and Jonathan Wayne. And in the course
16 of those conversations, uh, I believe, the
17 way it happened was, uh, Executive Director
18 Wayne suggested that it might be helpful, uh,
19 to the Commission if I were to come and share
20 my observations and experience. And, um, I
21 was glad now that I did, since our
22 organization was referenced a fair amount in
23 testimony of both parties. And so, uh, I
24 want to get mostly reserve a little bit of
25 time for you to ask any questions you have

1
2 about our activities. But to frame that very
3 briefly, what is our interest in this
4 proceeding. As, uh, someone who used to
5 practice law, I haven't been doing that for
6 12 years, but I have some recollection of
7 different routes of proceeding,
8 administrative proceedings, adjudicative
9 proceedings, and—and let me just say that I
10 take it that this is in the nature of a bit
11 of a mixture. Uh, different from other
12 adjudicatory bodies or administrative bodies
13 in the sense that you have before you, yes, a
14 specific complaint about whether or not
15 someone should file and you have to deal with
16 that complaint. But at least as I understood
17 the letter, the invitation was also should
18 there be different—what should the rule be.
19 What should the line drawn be? Uh, should
20 there be—should there be rulemaking? Uh,
21 should there be, uh, recommendations to the
22 legislature to change the statute to make it
23 clearer. And it's in that context that I
24 felt it was appropriate in that enabled
25 perhaps for me to comment. So from our point

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2 of view, our interest in this proceeding, uh,
3 one, knowing what the rules are. And I—and I
4 confess when I first read about the
5 complaint, I thought the issues before you
6 were really quite simple and I thought they
7 simply resolved themselves to the question
8 that, uh, your counsel asked, that is, did
9 the Maine Heritage Policy Center intend to
10 influence the election? And had they made
11 expenditures or engaged in activities that
12 cost them money, uh, for that purpose. And I
13 thought the answer was pretty clear to that
14 questions. Now, of course, having sat
15 through your proceedings I've learned that
16 it's a good deal more complex than simply
17 that question. And um, uh, there's this
18 potential conflict between the First
19 Amendment and the general constitutional
20 principles and I don't know what section of
21 the Constitution to trace the sanctity of
22 elections to, but perhaps the whole
23 Constitution is about the sanctity of
24 representative government. And so the
25 potential conflict between those makes the

1
2 case more complex. Um, I don't want to speak
3 particularly to the PAC registration question
4 'cause I don't feel like I know enough about
5 that either, in terms of the law, or the
6 facts, uh, in this particular case. I will
7 say that I found the presentations this
8 morning particularly, um, on the behalf of
9 the complainant, uh, persuasive that there is
10 a real question. I would actually, uh,
11 differ a little bit, uh, uh, with, uh,
12 attorney Billings who suggested, uh, there's
13 at least a question about 1056, but there's
14 no question about, uh, PAC registration. I
15 actually view it the other way around. I
16 think there's an interesting and serious, uh,
17 important question about PAC registration
18 having to do with major purpose and how you--
19 what facts you find about major purpose. Uh,
20 and there really--to my way of viewing it,
21 there isn't much of a question about the 1056
22 requirement as applied in this case. Um... so
23 going specifically to that, it seems to us,
24 that we and you are required to read the
25 statute as written and to enforce it--we would

1 ask the Commission to enforce it, uh, to the
2 degree that you find you can, uh,
3 constitutionally enforce it. So for us, the
4 threshold question is, was Maine Heritage
5 Policy Center trying to influence the ballot
6 initiative. And we agree with the staff
7 position that there is ample evidence in
8 front of you, uh, uh, ample evidence to
9 support the proposition that indeed of course
10 they were trying to influence the ballot
11 initiative. And uh, just, you know, we
12 participated in a lot of debates and we were
13 invited by the Androscoggin Chamber of
14 Commerce and the Bangor Chamber of Commerce
15 to take two examples, to represent the side
16 opposing the referendum. Those events were
17 scheduled in September and October of this
18 year and, uh, Mr. Becker in one case, and his
19 associate, Tarren Bragdon in another case
20 were invited to represent the proponents for
21 the referendum in front of the electorate.
22 So this was not an academic forum. Uh, the
23 Chamber didn't schedule that in September
24 and those events in September and October,

1
2 uh, just because it was an interesting policy
3 question. They weren't really seeking an in
4 depth, you know, political science kind of a-
5 analysis. They were asking to be influenced
6 about how they should vote. That was what I
7 understood their invitation to me to be that
8 it was about, was they were, uh, seeking to
9 give their, uh, members an opportunity, uh,
10 to-to be influenced, as to how they should
11 vote. So for me, um, it-it raises a serious
12 challenge for government if we start writing
13 statutes that don't mean what they appear to
14 mean to ordinary people. Now I appreciate
15 the difference between a legal analysis and
16 an ordinary person and I think this is a
17 question, uh, that Mr. Friedman was getting
18 at, at one point. Is can we set aside our
19 legal training and read something as ordinary
20 people do. Uh, but, uh, from our view, um,
21 it-it-it the plain language of the statute as
22 ordinary people would understand it, I-I
23 can't imagine that there's a person in Maine
24 who believe that the Maine Heritage Policy
25 Center uh, was not in fact trying to

1
2 influence the election. Um, and that that
3 was why. They went to virtually every Rotary
4 Club that I went to. Bill Becker had been
5 there before. And I don't think there was
6 any question as to why he scheduled those
7 visits. He was trying to influence the
8 election. So it appeared to me. Now. This
9 is my observation but it looked to me, I'm
10 just asking you to use your own eyes, your
11 own ears, your own understanding of what the
12 newspapers were saying and draw conclusion on
13 the basis of that. Now... we had mentioned
14 before that we have an interest in knowing
15 what the rules are, that we have an interest
16 that, uh, the rules, whatever they are,
17 encourage non-profit expressions of interest
18 in public debate. We think that's a good
19 thing. We share that interest with the Maine
20 Heritage Policy Center. But we also share
21 the interests that all non-profits should be
22 expected to follow the same rules. Because
23 it seems to us that it chills our First
24 Amendment rights to participate if we're, uh,
25 asked by the plain language of the statute to

1
2 disclose and others read it in a way that
3 requires reading, frankly, a lot of federal
4 election law that is not interpreting Maine's
5 statute at all. Uh, and through that reach a
6 conclusion that the words don't mean what
7 they actually say, uh, in the Maine statute.
8 Um, so, uh, we also would suggest that the,
9 uh, test should be, the intention to
10 influence as evidenced by actions. That it
11 should uh, turn on both the kind of
12 communication and the quantity of
13 communication. And we would urge that it not
14 turn on the question of the use of words
15 "vote for". Now let me take an example.
16 That is not, so far as I know, related to
17 Maine Heritage Policy Center, but it is
18 related to the issue and I think you'll
19 appreciate the point. The lawn signs for
20 most of the campaign for TABOR, which I
21 believe may be Roy Lenardson's group, uh,
22 produced, said, as I recall, Taxpayer Bill of
23 Rights, Fair, Effective, Reasonable. It
24 didn't say vote for question 1. But would we
25 have a rule that would say those lawn signs

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2 could be produced by a non-profit, um, I
3 don't think so. So there's the content of
4 the words... not having the words vote for, but
5 it seems amply clear to everybody, but of
6 course, those lawn signs were designed, uh,
7 to influence the election. Um, so I also
8 don't think it should turn on the forum of
9 where the words are spoken. Or that if it
10 said on a paid political advertisement, it's
11 trying to influence, and it just appears at a
12 Rotary Club, it's not trying to influence.
13 That does not seem to me to be, uh, to fit
14 with the purpose of the statute. Um, I guess
15 the final thing that I-I've run longer than I
16 intended, um... if you don't require disclosure
17 of an organization like Maine Health-uh,
18 Maine Heritage Policy Center, on the record
19 before you, it seems to me you create not
20 less confusion for non-profits as to where
21 the line is, but more confusion for non-
22 profits. I mean why would we report? Next
23 time around. Now. I have to acknowledge
24 that we did not file in '04. But the point
25 has been made, uh, fairly and we did speak

1
2 out on the Pulaski referendum and I'll just
3 plead ignorance. I know ignorance of the law
4 is no excuse even for someone who is in
5 inactive status bar registration, but I-I-it
6 never occurred to me that we were bumping
7 into a situation in which we might be
8 required to disclose. When that possibility
9 was brought to our attention in the spring of
10 this year, I first looked at the statute on
11 Political Action Committees. And I went down
12 the test, and this, you know, four prong
13 test, and I-I read every paragraph closely
14 and I said no, no, no, no, no. We are-we are
15 not within that test. I confess in my first
16 reading of the statute, I'm embarrassed to
17 say I didn't find 1056(b). I mean it's
18 buried down in there, it's not-there's not a
19 clear headline as to where it is, so in that
20 way, I agree with counsel Billings that, uh,
21 it will be good to clarify. I think it would
22 be great for there to be rulemaking to spell
23 out how staff time should be treated. We did
24 make choices in how we filled out the form.
25 We did decide that our staff time engaged in

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2 activities that were directly intended to
3 influence voters, was the time that we chose
4 to report. So we also, uh, if in development
5 of materials, written materials, but time
6 specifically spent researching and writing a
7 particular piece of material if the—if that
8 piece was designed to influence, uh, voters,
9 we declared that time. We didn't declare all
10 the time and we had the advice of counsel.
11 We went to counsel early on and said what do
12 we do with this statute? And the initial
13 response of the counsel we sought was, you
14 know, you might have an argument that the
15 First Amendment protects entirely every thing
16 you do and you don't have to report anything.
17 And I said thank you very much for that
18 advice, but I could fight all the way to the
19 Supreme Court on that, but that's not what
20 our organization is about. We believe in
21 disclosure. We believe in the election laws...
22 just to distinguish a little bit, the uh,
23 Maine Heritage Policy Center of course is
24 staffed by people who are very familiar with
25 election law. Uh, as we know, Bill

1 [Coughing] well last position before he took
2 his current position was as Finance Chair, as
3 I understand it, paid I believe it for a
4 political campaign. Roy Lenardson has been a
5 consultant to many campaigns and while now in
6 this campaign he—he run the PAC, immediately
7 prior to that he was a paid staff member of
8 Heritage Policy Center. So these are folks
9 who have a lot of familiarity with these law,
10 and are necessarily, uh, perhaps it's fair to
11 hold them to a slightly higher standard as to
12 what the law actually requires. 'Cause it's
13 an area in which they practiced, uh,
14 regularly. Uh, whereas some of us, I've
15 never been involved in, uh, a paid capacity
16 in any political campaign. I've never
17 staffed a Political Action Committee. I—it's
18 not an area that I know well. I came to know
19 it because I was—it was brought to my
20 attention that we might have a responsibility
21 to file and we did for those reasons. I—I'm—
22 I want to say one final thing about potential
23 statutory changes. I agree with one thing
24 that Dan Billings said about the potential
25

1
2 for many people in the public to be
3 disappointed in the results of this
4 proceeding. If you find that the Maine
5 Heritage Policy Center is not a Political
6 Action Committee subject to those disclosure
7 requirements, I think the 1056 that they
8 might be required to file might disappoint a
9 lot of people because of our reading of the
10 current requirement is that only
11 contributions that are specifically
12 designated for the purpose of influencing an
13 election have to be required to report. So
14 you will see as Dan, sobering report showed,
15 we reported more expenditures than we showed
16 contributions. Now in our case it wasn't
17 huge amounts of money so maybe people don't
18 care that much. But, uh, you know, in this
19 issue, the uh, Americans for Limited
20 Government were spending literally hundreds
21 of thousands and in some states, millions of
22 dollars to advance TABOR across the country.
23 Uh, many of those efforts led to the Supreme
24 Court's in particular in Montana and another
25 state that I'm blanking on right now, to

1
2 throw those efforts off the ballot because
3 they found considerable election fraud in the
4 efforts that were funded, uh, by the
5 Americans for Limited Government. Now
6 Americans for Limited Government made only
7 \$125,000 of recorded contributions to, um,
8 the uh, PAC that Mr. Lenardson represented.
9 And so perhaps we shouldn't be too concerned
10 about their trying to influence Maine
11 elections in the way they tried to influence--
12 fraudulently tried to influence the elections
13 in other states. But if just hypothetically,
14 they had given half a million dollars to the
15 Maine Heritage Policy Center, I would submit
16 that's a fact that the Maine people would be
17 very interested in knowing. And I fear that
18 the current 1056 statute, if that's the only
19 one that applies, uh, is not sufficient to
20 reveal that fact. The fact that it's
21 relevant to the election is illustrated by
22 the fact that Maine Heritage Policy Center
23 commit-commented extensively on where the
24 money for the anti-TABOR side was coming
25 from. So--and the press reported it and the

1
2 people were apparently interested in where's
3 the money coming from. So if we—if we can
4 acknowledge that where the money comes from
5 is important to the validity of the election
6 and to one person/one vote, those kinds of
7 principles, then I think we ought to look
8 again at that statute and in a case like
9 ours, in which we're declaring more
10 expenditures than we're declaring
11 contributions, maybe we should be required to
12 say something either about—about
13 contributions to match our expenditure that
14 we declare, uh, some of it general support,
15 or if we choose not to do that, then we ought
16 to be able—be required to—to report something
17 about our general sources of contribution.
18 Our, uh, annual report for '04 is up on our
19 website and we'd be happy to discuss with
20 people our sources of financing. That's
21 publicly available but we recognize that not
22 all non-profits want to disclose all their
23 sources of support so we—we do appreciate
24 that some care needs to be applied in
25 developing a new standard that the statute

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2 doesn't in my view currently have, but it is
3 something you might want to consider as you
4 have your discussions with the legislature
5 about changes to the statute that might
6 clarify this area. I'm so sorry I've taken
7 more time than I anticipated.

8 HON. KETTERER: Thank you attorney St.
9 John. Questions for the witness. Yeah Vin.

10 MR. CASSIDY: Well, I just have a
11 comment, uh, as you were speaking, I-I was
12 thinking, uh, three or four months ago we
13 spent hours here listening to a debate on
14 express advocacy. And it was, you know, uh,
15 very, very involved and a lot of, uh...
16 testimony, and—and we struggled with the
17 whole thing and finally, uh, you know, made a
18 decision in that gubernatorial race that that
19 wasn't there, and actually went clear to the
20 Supreme Court who—who in [unintelligible]
21 Maine upheld our decision here as a board
22 and... today we're hearing this just one today,
23 I don't see that there was any express
24 advocacy by that group even though they did
25 debate it, they talked about it and so on and

1
2 so forth, so I think that's one of the issues
3 that sticks with me when I listen to this
4 whole debate today is that, uh, similarities
5 there as well.

6 MR. ST. JOHN: Well, I-I would agree
7 that, um, attorney Billings has-has made a
8 good case for the proposition that the
9 express advocacy test should be taken from
10 the political campaign committee and
11 political campaigns for individuals and
12 applied to 1056 that applied to issue
13 advocacy. The reason that test is there as I
14 understand it, in the, uh, campaigns for
15 individuals for office, is that because there
16 are campaign limits, uh, there's a greater
17 burden on speech and therefore greater
18 constitutional protection and therefore the
19 need for a clearer test which narrows the
20 zone of that which is subject to a limit on
21 speech. The distinction I would make is 1056
22 doesn't limit speech at all. It says talk to
23 your heart's content, just tell us where your
24 money's coming from. And I personally
25 believe that's a legitimate, modest burden on
26 speech which is therefore doesn't require the

1
2 stringency of the express advocacy test. And
3 so I think the broader, uh, interpretation of
4 1056(b) which is being urged upon you by the
5 staff, I would support, uh, to go beyond the
6 express advocacy test to think about what's
7 the plain meaning as ordinary Maine people
8 would understand it. I personally find it
9 disturbing when there's a statute that—that's
10 planned ambiguous that's one thing, but when
11 ordinary people would understand it one way
12 and it takes high priced lawyers to tell you
13 what it really means, and it doesn't mean
14 anything like what you—what you would read as
15 an ordinary person. And now, I know, that's
16 what lawyers get paid for and so I—having
17 been trained to work this one for a while, I
18 can't complain about that fact that it does
19 require careful reading. I just—the reading
20 is being misapplied, taken from one area of
21 the law and put it into a different context
22 where the constitutional reasons for that
23 interpretation in the election of, uh, office
24 holders doesn't in my view apply to the 1056
25 section.

26 HON. KETTERER: Thank you. You have any

questions?

MR. CASSIDY: But you are aware that high priced lawyers don't really tell you what the statute says, it's the lower paid judges who do that.

[Laughter]

HON. KETTERER: Thank you for that editorial comment. Uh, thank you. I think at this point, uh, uh, given that it's, um, uh, after, uh, 12:00, uh, I'll give, uh, a extraordinarily brief opportunity of less than five minutes, uh, first to, uh, Dan Billings, and second to, uh, attorney Branson to sum up anything or have some further comment. We'll let him go second 'cause he's got more of the burden of persuasion here. So. Anything you want to say?

MS. GARDINER: [off mic]

HON. KETTERER: Yeah, Okay. Okay. You want to take a quick recess or no. Yeah, we're going to be in recess for five minutes and that will give you an opportunity, uh, to get your thoughts together.

[Whereupon a recess was taken]

1
2 HON. KETTERER: Uh, we're reconvening
3 after a short recess. Uh, and, uh, I'm told
4 that there is--is there another party here
5 that, uh, is either for or against? Yes, I'm
6 sorry I recognized your hand earlier and I
7 just thought you were an interested citizen
8 and of course you are an interested citizen,
9 who also has something to say, about how long
10 do you think your remarks--

11 MR. JEFFREY AUSTIN: Very, very brief.
12 About five minutes. Or less than that.

13 HON. KETTERER: Okay.

14 MR. AUSTIN: Hold me to it. My name is
15 Jeff Austin and I'm a lobbyist for the Maine
16 Municipal Association. Uh, we were--I'm here
17 because, uh, our comment was solicited by the
18 Commission. Uh, on the issue of 1056(b), as
19 a general policy matter. We have no comment
20 on the PAC filing issue. We have no comment
21 on whether Maine Heritage Center broke any
22 law or didn't break any law. But I wanted
23 to... make three comments. One, I strongly
24 urge you to do some rulemaking to clarify
25 some of the issues. We actually think they

1
2 are clear but should at least make them
3 definitive in the public's opinions as to
4 what is required. Second, I want to make a
5 couple of clarifying comments. Uh... a list
6 was handed out regarding who made 1056(b)
7 filings. Maine Municipal Association did not
8 make what some people might call a 1056(b)
9 filing. A 1056(b) by its terms--by its terms,
10 says you can do it one of two ways. Make a
11 separate report, I think that's called a
12 1056(b) report, or report your activities as
13 an in kind contribution to an existing PAC.
14 That is what we did, uh, to the tune of
15 around \$50,000. So you--you will not find
16 Maine Municipal Association on there as
17 having made a separate 1056(b) report. This
18 is my first time appearing before you, I
19 don't know all the lingo--

20 HON. KETTERER: [i] You're doing pretty
21 good so far, Jeff.

22 MR. AUSTIN: --but because of the
23 language, the broad language in 1056(b), we
24 made the in kind contribution filings with--
25 relative to the Citizen's United PAC, which

1
2 was the primary PAC organized to, uh, opposed
3 TABOR. I don't represent AARP, I have-I
4 haven't spoken with them about this, but if
5 you look at our comments, MMA's comments to
6 you in response to your solicitation, you'll
7 see [Coughing] a comment which includes the
8 in kind contribution sheet for the Citizen's
9 United PAC. On there is AARP. Their name
10 has been bandied about as having not made a
11 1056(b) filing. Well they did what we did.
12 And what others did, which is instead of
13 making a separate, independent report, they
14 made an in kind contribution report to the
15 PAC. And that is called for in 1056, one way
16 or the other. So I wouldn't want anyone in
17 this press room, I wouldn't want anyone to go
18 away with the impression that at least as far
19 as MMA is concerned, and including AARP, that
20 they didn't make a 1056(b) filings, um,
21 because of 1056(b), we made in kind
22 contribution filings. Um, and we did so
23 along, uh, Ms. Thompson asked whether or not
24 the make-the institution of this
25 investigation is what caused many

1 organizations to make these filings. It had
2 nothing to do with MMA making filings. We've
3 been making filings going back for many, many
4 years. It's hard to hide when you're on
5 every cable access loop in the State for four
6 months. So we have nothing to hide. Uh... I'd
7 like to be able to sit before you and say
8 regardless of what you do with respect to
9 Maine Heritage, we're going to go ahead and
10 continue to file because it's the public's
11 interest to know. And we've got nothing to
12 hide. I'd like to be able to say that. But
13 I don't know that I can. The, uh, relative
14 war chests of groups engaged in ballot
15 initiatives, is itself a political football.
16 And Maine Heritage in this election and other
17 groups and in every election, make use of the
18 relative war chest's status. The fact that
19 we were contributing money was being used
20 against us. The fact that we were making in
21 kind contributions of staff was being used
22 against us. And that is something that we do
23 have a problem with. I don't know if we out-
24 spent the other side in TABOR. We certainly

1 out-reported. And so if it-it-if-since this
2 is a political football and you take it-if
3 you decide to take a narrow interpretation,
4 uh, of the [Coughing] obligation to file a
5 1056(b), I don't know that we will be able to
6 continue to file because of the exploitation
7 of these filings by various groups engaged in
8 political advocacy. So... we urge you to take
9 a, what we think is not a broad
10 interpretation, but an interpretation of a
11 broad directive, uh, a clear interpretation
12 of a broad directive from the legislature to
13 include any activity, any way influencing an
14 election, uh, if those activities be the
15 educational or not, be included. That's the
16 standard we used. I'd be happy to take your
17 questions but really I think, uh, getting
18 into the details of why something should be
19 filed would be better done in rulemaking, and
20 that's the context in which we'd be happy to
21 [unintelligible] it.

22
23 HON. KETTERER: Thank you for your
24 comments. Questions by Commission members?

25 MR. AUSTIN: Thank you.

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2 HON. KETTERER: Thank you very much for
3 your comments. Uh, at this point we would,
4 uh, well might typically turn to, uh, counsel
5 for... um, the respondent to, uh, make any very
6 brief concluding remarks, but, uh, uh, he has
7 indicated that, uh, he is required to be in
8 the Waterville uh, District Court, uh at 1:00
9 for a different client and so he had to
10 leave. He also commented that—he told me I
11 could put on the record the fact that he felt
12 he had, uh, an opportunity to put before the
13 Commission all the information that he wanted
14 to and didn't feel there was anything else he
15 would add and so he's going to waive his—his
16 five minutes, uh, closing remarks and um... uh,
17 and I said that was fine. We'd put that on
18 the record. He's already left. I'm going to
19 turn now to attorney Branson, if you want to
20 take, um, up to five minutes, but not longer
21 than five minutes. Be happy to hear from you
22 to sum up, particularly since, uh, we have
23 not heard from you, during which we have
24 taken 90 minutes of testimony from others, so
25 we want to—respond in any way or spend that

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2 five minutes however you would like.

3 MR. BRANSON: Thank you very much, uh,
4 for the opportunity to, uh, try to tie
5 together, um, some of the, uh, arguments and
6 issues that we've heard, uh, from, uh, both
7 sides and from sides that are not aligned,
8 from parties that are not aligned to either
9 side. Um... I've learned some things today and
10 it's caused me to sort of clarify what I feel
11 on the fundamental issues. I want to make
12 sure--something seemed to get lost in the--in
13 the uh, uh, presentation by Mr. Billings and
14 Mr. Becker that I--I tried to, uh, avert in
15 the context of my, uh, testimony. And that
16 was that, uh, there seems to be this question
17 as to whether we're trying to turn Maine
18 Heritage Policy Center into a PAC. To wave a
19 wand and say you are now a PAC and you're
20 limited to behaving like a PAC. Uh, that's
21 not what we're doing here. It may be
22 necessary to look back in 2006 and have to
23 conclude that they're a PAC. But basically
24 what we're suggesting is what they should
25 have done if they were complying with the

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2 law, is establish a separate organization
3 that would allow the Maine Heritage Policy
4 Center to continue as a think tank. It would
5 have been a lonely place in 2006, we think.
6 But they'd have a separate PAC, you know, the
7 Maine Heritage Policy Center pro-TABOR PAC.
8 And they--and that's the entity to which they
9 conduct the activities to promote the passage
10 of TABOR. We're not--you know, so in the
11 future, uh, they're not going to have to
12 disband their organization or re-characterize
13 themselves as a PAC. They're just going to
14 have to do what the MEA does, for example.
15 Set up a separate PAC if they want to get
16 this involved. And have as their primary
17 purpose in an election year, uh, something
18 like TABOR. So I want to make sure that
19 issue was clear. The second issue, I--I think
20 it's interesting this whole express advocacy
21 thing which they're using as a shield, you
22 know. That Mr. Becker never engaged in
23 express ad--advocacy, uh, for TABOR and the
24 fact that, you know, he was out there as a
25 policy expert and so were his staff. I view

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2 this fundamental defense of the Heritage
3 Policy Center as their fundamental problem.
4 Uh, the--the--the basic point of my
5 presentation, what--that this is exactly what
6 the legislature intended to prevent. The
7 whole purpose of the PAC statute, one of the
8 major provisions in 1055 is to make sure that
9 when organizations are engaged in activities
10 to influence the outcome of an election, they
11 have to disclose specifically to the public,
12 what their position is on a ballot
13 initiative. And who they are and what their
14 identity is. By not engaging in express
15 advocacy, if--if we accept that to be true,
16 Mr. Becker didn't have to do any of that. He
17 could, uh, uh, you know, mislead the people
18 into believing he was an independent policy
19 expert. And that the voters who were being
20 told about how great TABOR was were not told
21 and--and Mr. Becker did not tell them. And
22 he's using it as a defense that he did not
23 tell him--tell them. That he specifically
24 supported TABOR. That his organization
25 supports TABOR. Okay. So their defense,

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2 their main defense is I think their main
3 problem. And gets to the issue of why the
4 PAC requirement is set up so that
5 organizations have to disclose to the public,
6 in advertisements, in public appearances, who
7 they are and what their position is on the
8 referendum. Three, I-I think Kit St. John's
9 comments were particularly illuminating for
10 me. I talked about one asp-one sort of circ-
11 problem relating to the circumvention that
12 groups like Maine Heritage Policy Center
13 might engage in to avoid the PAC, uh,
14 disclosure and registration requirements. My
15 focus was primarily on the fact that they did
16 not have to disclose their identity, their
17 address, what their position on the statute
18 was. I think it-put themselves off as a
19 think tank. Uh... you know, with independent
20 policy ideas. Uh, Kit St. John raised
21 another issue in-in-in viewing, you know,
22 1056 and 1052, uh, together. And that is
23 that, uh, you know, Americans for Limited
24 Government, they're not stupid They've got-
25 they've got the high priced lawyers, okay.

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2 When they send a big check to Bill Becker,
3 they are not going to say this is for TABOR
4 support, okay? And then Bill Becker does not
5 have to disclose that on his 1056(b). Now if
6 you agree with me that they really behaved
7 like a PAC and should be treated like PAC in
8 2006, we all know that they would have to
9 disclose all of their assets and all of their
10 contributions. And you would get to see if
11 they got a nice big check from Americans for
12 Limited Government, and you might be able to
13 research the activities of Americans for
14 Limited Government and where other checks
15 have gone. And you might legitimately
16 conclude that this was a contribution meant
17 to help them in their TABOR campaign. I mean
18 Maine Heritage Policy Center, our position
19 is, that they were the public relations arm
20 of the pro-TABOR PAC and—which was off loaded
21 to them in a way to conceal where some of the
22 really big money was coming from. And so
23 that's—that's another issue and I thank Kit
24 St. John, when I ask that that's uh, a
25 possibility you might want to consider but

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2 you'll never get that information if you just
3 require them to file a 1056(b) report. Uh,
4 that--that's clear to me. Uh, I would say,
5 uh, uh, fourth, uh, Mr. Becker, uh--Mr.
6 Billings says well, uh, we only dedicated
7 staff time and--and resources. We didn't
8 spend any money. We didn't buy any print
9 advertisement. Even if we accept that to be
10 true... if the staff--if the Commission
11 concludes that they are not [Coughing] in
12 2006, and that an organization that is a
13 think tank who happens to grab a major
14 purpose in an election year does not become a
15 PAC, there's nothing that would prohibit them
16 in the future from using money to buy
17 advertisements and do all the things that
18 PACs do without having to register as a PAC.
19 And that's the danger of--of--of--of--of not
20 finding them a PAC in this case. It says the
21 next time around, uh, you can do all of what,
22 you know, the other PACs did, in terms of
23 buying advertisements and--and so forth and
24 simply file a 1056(b) report because, you
25 know, you're a think tank, not a PAC. And

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2 you know, so that's the danger. Even though
3 they didn't do it this time, uh, there's
4 nothing that says they couldn't do it if the
5 Commission were to adopt the wrong analysis
6 of the PAC issue. And my final point has to
7 do with the constitutional issues, you notice
8 I didn't spend any time in my presentation on
9 constitutional issues. The reason is I think
10 they're only relevant in the context of the
11 1056(b) inquiry. Our position is 1056(b)
12 does not apply to this organization. That is
13 a free pass. That is a Christmas gift for
14 this organization. They may publicly--
15 publicly be saying that they're opposed to
16 filing this, but privately, they are wishing
17 and hoping like you can't believe that this
18 is going to be the result of this. So... all I
19 can say is I don't believe those same express
20 advocacy, constitutional issues are raised in
21 the context of 1052 and the other provisions
22 governing Political Action Committees. The
23 reason is that 1056(b) is a little bit
24 broader in terms of the language and there
25 may be constitutional issues there. We don't

1
2 get them, and that's the reason why we didn't
3 say anything. I thank you for your time.

4 HON. KETTERER: Hold on. If you want to
5 ask a question, go head.

6 MR. FRIEDMAN: Didn't your initial
7 complain suggest that they should be well
8 found to be a PAC and alternatively if not a
9 PAC, they should be required to file a
10 1056(b).

11 MR. BRANSON: Well first I'll say, uh,
12 I-I was not retained by Mr. Lindemann until
13 after he filed this complaint and just in
14 full disclosure, I-I did not-I did not work
15 with him in drafting that complaint. As far
16 as what our position would be, uh, certainly,
17 um, if the Commission were to conclude that,
18 um... that they were not required to establish
19 a separate PAC in '06 or to register
20 themselves as a PAC in '06, I think either of
21 the two conclusions might be possible, then,
22 um... uh, yes, obviously well-yeah, for the
23 benefit of the Maine public, which is really
24 what Mr. Lindemann is here, he would
25 certainly, if-if all he could get were the

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2 limited disclosures under 1056(b), that would
3 certainly be more illuminating for the public
4 than the information that the Maine Heritage
5 Policy Center has been forthcoming with thus
6 far. So, um, I guess that's our answer.
7 Thank you.

8 HON. KETTERER: Anything else? Vin?

9 MR. CASSIDY: Uh, just one comment
10 there. If-you know, if in fact in the future
11 they did decide to buy radio ads and print
12 ads and all that, then they would obviously
13 have to file those kinds of things.

14 MR. BRANSON: Um, no. Uh, uh, my-my
15 response to that is, remember the-the
16 analysis of whether they're a PAC or not, uh,
17 the one suggested by the staff and by the
18 Heritage Policy Center is that we look to
19 the-sort of the organizational purpose, why
20 it was founded. We look to all their
21 activities and uh, under that definition,
22 Maine Heritage Policy Center will never be
23 found to be a PAC. And therefore any
24 expenditures they make, like in the future,
25 let's say they decide to get involved in mass

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2 mailings, telephone, print media, broadcast
3 advertisements, they would only have to file
4 a 1056(b) report, reporting those
5 expenditures--

6 MR. CASSIDY: [Interposing] But they
7 would--

8 MR. BRANSON: [i] and they would not
9 have to report any of the large contributions
10 coming into their treasury during that time
11 period.

12 MR. CASSIDY: But they did not do any of
13 those things in '0-'06, right?

14 MR. BRANSON: That's right. But we're
15 concerned about the precedent that this
16 decision will set. And what it will mean for
17 the future activities of organizations like
18 the Maine Heritage Policy Center who want to
19 shield their general contributions behind a
20 curtain and want to participate in-in
21 political campaigns without having to
22 disclose to the public what their stake is,
23 or even what their specific position is in a
24 way that misleads them into believing that
25 that--there's some sort of independent, uh,

expert, weighting in on the debate, uh, like someone from the Muskie School or the Margaret Chase Smith Center, for example. We think this is exactly what the legislature intended to avoid.

MR. CASSIDY: Okay.

HON. KETTERER: Any more? Okay. I thank you for your, uh, your concluding remarks. Uh... at this point we've heard from everybody. We've had opening statements, closing statements, and um, uh, we can either, um, try to wrap this up today, we can, um... uh... take a luncheon break or if you think we can wrap it up--you know quickly, we can just keep working. I don't know. What's the pleasure of the Commission?

MR. CASSIDY: Whatever, you know.

HON. KETTERER: Yeah. Figure out who else--

MR. CASSIDY: [i] Yeah, in other words--

HON. KETTERER: [i] Okay.

MR. CASSIDY: --before I--

[Crosstalk]

MR. CASSIDY: --I will allow

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[unintelligible] that's the final reason--

HON. KETTERER: [i] Oh okay. All right.
Well all right. So, um... uh... does
[unintelligible] have any questions for
Jonathan, you've got some materials Jonathan,
you want to give those to us, or?

MR. WAYNE: Yeah.

HON. KETTERER: You have an explanation
about them, or?

MR. WAYNE: Uh, only if they're of
interest to you--

HON. KETTERER: [i] Okay.

MR. WAYNE: I advance [phonetic] that
there's not a lot of guidance uh, on what our
[unintelligible, microphone being moved] and
I think the Commission, uh, we can put
together a memo, uh, if you decide you want
to direct MHPC to file a 1056(b) report you
might want to direct us [unintelligible] to
send this out. I think it's also a fair
claim of Dan's that um, if there are wide
miss-deviations in what people think need to
be reported, then it might be appropriate to
send this meanwhile to the other groups about

1056(b) reporting. That way they're—we would be promotion a common understanding. But I don't know if you want [Coughing].

HON. KETTERER: All right. Thank you Jonathan. Um...

MS. THOMPSON: I have questions.

HON. KETTERER: Okay.

MS. THOMPSON: Um... uh, I'd like to ask staff if one... there's more information you need, you'd like to have that would, um, clarify or substantiate your current recommendation or more information you would like to get that may add value to change your current recommendation.

[Off mic]

MR. WAYNE: Now, uh, my... I don't think that—I think that, uh, the recommendations of the staff that—that you interpret the statute as recommend—conclude the expenditures, uh, made to, uh, made for the purpose of... initiating, promoting, defeating or influencing in any way a ballot question, and I actually have the PAC definition and the 1056(b) statute for you in case you want to

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2 refer to it. And that you don't cut it back
3 to only cover express advocacy. Because I
4 think that that—I understand the free speech
5 arguments that Mr. Billings is raising, but I
6 just don't think that's the role of the
7 Commission to say we're so fearful of—unless
8 the courts have come in—agencies that's a
9 clear direction that it can't, um... apply the
10 statute as written I think—I think you should
11 apply it as written. And I have, uh, been
12 talking with Phyllis and both Phyllis—both of
13 us think that the case law, that is the court
14 decisions, uh, are not that clear that you
15 would absolutely have to cut this back to
16 cover only express advocacy. So that—that's
17 one statute. The other point that I would
18 make is that in my view, if it's very clear
19 that the MHPC has hidden—made expenditures on
20 staff, in order to promote or influence the
21 TABOR initiative. You—you just cannot read
22 all those statements in the press and view as
23 I did, the uh, the debate at Waterboro where
24 Bill Becker is there being introduced as a
25 proponent, um, to debate. He talks about how

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2 TABOR is the solution to Maine's dismal
3 economy. It's the answer, you know, there's
4 all sorts of positive [unintelligible].
5 Without concluding that he wasn't being paid
6 by his organization that night in order to
7 influence that election. Um... I still
8 personally prefer that the direction would be
9 to file the 1056(b) report, so I think that
10 would provide the public... with contributions
11 specifically made to promote or influence the
12 ballot initiative. And also expenditures
13 made to promote or influence the ballot
14 initiative. Um... uh, I'm happy to explore
15 further with you, you know, the PAC
16 definition if you'd like but... um... it's clear
17 to me that TABOR was a major project of the
18 MHPC during 2006. But I don't know if it's
19 fair to say that's the major purpose of the
20 organization overall. So I still tend to say
21 it's not a PAC although I'm happy to do more
22 research or do more thinking, whatever
23 [unintelligible], if you want to explore
24 further the idea that MHPC is a PAC or should
25 have filed as a PAC...

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2 MS. THOMPSON: That's the concern I
3 have, among others, among many--

4 MR. WAYNE: [i] Sure.

5 MS. THOMPSON: --is that, um, we've had
6 recommendations from the staff based on the
7 evidence that had--the staff had before them.
8 They made the recommendation that we require
9 a 1056(b). But following [Coughing] uh,
10 testimony and especially those from the MHPC
11 staff were asking for not only clarification
12 of information from the group, but also was
13 asking new questions about information. So
14 that led me to think that staff perhaps needs
15 more information in order to clarify their
16 recommendation. I think John's--John just
17 said that in fact. And that would lead me to
18 think that we do have to put our
19 investigation into a, uh, into further, um..
20 uh, to require, subpoena, sworn testimony or
21 whatever, uh, so that we do have all of the
22 information before us to determine if in fact
23 major purpose was reached in terms of the
24 MHPC's activities for the year 2006. I don't
25 think any of us can answer that based on the

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2 information before us. And that's—as long as
3 I have a question in my mind as to whether
4 major purpose was reached, I think I need
5 more information as to where staff was, what
6 they were doing and so forth for, um... 11
7 months out of that year.

8 HON. KETTERER: Mike, any thoughts?

9 MR. FRIEDMAN: Yeah. I would, uh, tend
10 to disagree to a certain extent 'cause I
11 think that what we might do is opening up—
12 open up a fishing expedition... uh, an entity,
13 uh, that, uh, may put the cart before the
14 horse. I think that as a Commission we are...
15 entitled to have a certain amount of
16 information. Personally I think the
17 information that we had... uh, at least is
18 sufficient for me to make a decision... on the
19 narrow issues presented by this complaint,
20 whether MHPC is a PAC and should make the
21 necessary filings or B) whether they are
22 required to make limited filings under
23 1056(b). I don't think that a review of all
24 the financial... information from MHPC will
25 help me answer that question two years down

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2 the road. Um... I looked at the statute, uh...
3 I'm prepared to at least give my thoughts on
4 why I think we can make those decisions, uh,
5 today, based on an interpretation of the
6 statute. And then go forward from there.
7 Uh... initially when I came into this I thought
8 that if there might be... a need for, uh, more
9 investigation... but after hearing what we've
10 heard for three hours and getting the
11 information that both sides, uh, have
12 presented to us, uh, I think we can actually
13 decide those issues.

14 MS. THOMPSON: So you mind if we have a
15 discussion on--

16 HON. KETTERER: [i] Yeah, let's--that's
17 fine.

18 MS. THOMPSON: I'd like to say that--

19 HON. KETTERER: [i] Eventually there'll
20 be a motion some time, but let's hear what
21 you have to say.

22 MS. THOMPSON: You're asking some
23 questions that I appreciated on, uh, on some
24 of the witnesses, uh. And one that you
25 concentrated on, that resonated with me was

1
2 what--well how do you define major? What is a
3 major activity and so forth. And we had the
4 complainant telling us from an examination
5 of... of press releases that there was--that
6 was--that that constituted evidence towards
7 major activities towards influencing that
8 ballot question. But I need to hear from,
9 uh, my other Commissioners as to whether
10 their concept of major purpose, etcetera, was
11 answered from the testimony of either side.

12 MR. CASSIDY: Well--you know one--one
13 thought that I have on [unintelligible] that
14 question is I don't even think their
15 philosophy at least is the major problem with
16 the State of Maine and the economy, so forth,
17 is the higher tax. We've seen all the
18 information about, you know, being the
19 highest taxed state, so on and so forth, so...
20 and they also... you know, authored this thing
21 apparently. The TABOR thing, so obviously
22 that was, uh, you know, a major issue in
23 their philosophy at least, you know. So--so I
24 could see why that they would perhaps spend
25 time during the year to--to--to enlighten

1
2 people, to educate people to that fact, uh.
3 The other thing that you mentioned prior was,
4 you know, how much time did they spend, you
5 know, staff time and all those kinds of
6 things. Well if they did—if they were
7 required to file the—the 1056... then they and—
8 you know the next question what would it be,
9 but I assume would have to be what time did
10 they spend on that. I mean, uh, employee
11 hours and so on and so forth, so that would
12 enlighten us, you know, in that particular
13 question that we had, but that's a couple of
14 thoughts that I had.

15 MR. FRIEDMAN: See I thought that that
16 major purpose, in the statute, 1052, it says...
17 any—uh, any organization including any
18 corporation or association that has as its
19 major purpose, advocating the passage or
20 defeat of a ballot question... as I have heard
21 the evidence and as I reviewed the filings
22 that—that have been made, major purpose goes
23 to the underlying reason for this entity to
24 be in existence. And from what I've heard,
25 it has a number of different purposes. Uh,

1
2 which would include healthcare, which would
3 include, uh... uh, ex-education, economic
4 viability of the State of Maine. That's the
5 overriding purpose for its being. However,
6 in a campaign cycle, it may have what I
7 consider to be a significant purpose,
8 different from major purpose, and I know it--
9 you know, it's--

10 MR. CASSIDY: [i] Words.

11 MR. FRIEDMAN: --it's-it's words, but
12 it's the only thing I can communicate in.
13 Um, I don't think that a single campaign...
14 issue, even though it is a significant issue
15 necessarily takes away from the major purpose
16 of the underlying organization. That's not
17 to say that if in 2008, TABOR were--were back
18 on--on the books, and MHPC came out with the
19 same thing, to me... if that happened, it may
20 change the way--the significant issue into a
21 major purpose of the organization, to make
22 certain that TABOR becomes law in the State
23 of Maine. But I don't think that you can
24 necessarily look at a single campaign cycle
25 and say because they spent 84% of all their

1
2 time on this one issue in this one campaign,
3 one year, that it necessarily it a major
4 purpose of the organization itself. That's
5 how I kind of... separate it in my own mind.

6 MS. THOMPSON: Well do you think that an
7 organization, uh, can evolve? Into a PAC and
8 practice as a PAC... even though that might not
9 have been its--its initial mission?

10 MR. FRIEDMAN: Absolutely. And I think--

11 -

12 MS. THOMPSON: [Interposing] So that's
13 what I'm--

14 MR. FRIEDMAN: --and I think they can in
15 this particular case, at least in my mind--

16 MS. THOMPSON: [Interposing] Well.

17 MR. FRIEDMAN: --if in 2008 we have
18 TABOR or a similar issue, that they give all
19 their time, that gives us... you know, more
20 than one cycle. It shows us I think any
21 underlying... uh, purpose of the organization
22 is to be certain we have a Taxpayer's Bill of
23 Rights in the State of Maine. So I think it
24 can evolve. But I don't think one campaign
25 cycle necessarily makes it a major issue.

1
2 MS. THOMPSON: So if we had—if we had
3 information before, as to the—the total
4 amount of staff time contributed during the
5 past year to pass that ballot issue, if we
6 had that information before us, would that
7 clarify your position—would that help you to
8 [Coughing] support your position more or
9 change your position? My point is maybe we
10 need that information—I'm not necessarily
11 sure that that therefore becomes a "witch
12 hunt" or fishing expedition. Because I think
13 we need to respond to the legitimate
14 complaint that is in fact before us--

15 MR. FRIEDMAN: [i] Uh, I think we are--

16 MS. THOMPSON: --[unintelligible]
17 looking for information--

18 MR. FRIEDMAN: --in two different ways.

19 MS. THOMPSON: --Looking for information
20 is not necessarily a fishing expedition or a
21 witch hunt. I mean we're—we're supposed to
22 respond to this legitimate complaint.

23 MR. FRIEDMAN: And I think we can. But
24 I don't think we necessarily have to... go
25 that—to that step. According to my thinking.

1
2 You know, if you were to tell me that the
3 records will show 84% of staff time... was
4 committed to TABOR in 2006, I would say well
5 that's interesting. But it doesn't change my
6 mind as to whether or not the major purpose
7 of MHPC is for... the, oh, the ratification of
8 TABOR. I still think the major purpose of
9 MHPC is for education, healthcare, financial
10 solvency of the State of Maine. Uh, they
11 have one significant issue in this campaign
12 cycle. But I don't think that necessarily
13 changes the--the face of the organization
14 itself. And believe me, I--I--I've come into
15 this believing in full disclosure, uh, as a--
16 as a naïve, non-politician type would. But...
17 you know, and coupled--I have to couple that
18 with... who I am and what I bring and that's a
19 view that we shouldn't be necessarily sitting
20 here legislating. You know, that's for
21 somebody else. I think what we have to do is
22 interpret what the legislature gives us,
23 assume that they know what they're doing, and
24 go from there. Uh, we make recommendations,
25 some--sometimes they're accepted by the

1 legislature, and sometimes they're not, but I
2 don't think as a body, we're in a position to
3 create legislation, to create something new a
4 different because it-it feels good or-or it
5 might look good.
6

7 MS. THOMPSON: Okay. Then I guess what
8 I'm saying is that... we-we have to make sure
9 that our decision is as right as possible.
10 And, um... I only suspect, I do not know,
11 whether or not a majority of-I do believe
12 that an organization can-can have a mission
13 and then evolve into the activities of a PAC.
14 I think that's practically... evident and so
15 forth. So my problem is that I want to make
16 the-a correct decision and my sense is that I
17 cannot yet know whether or not my decision-
18 the activity of MHPC, which is the... the
19 subject before us, whether or not the
20 activity in 2006 was, uh, primarily to pass
21 TABOR. Primarily to the extent of creating a
22 major purpose for the organization. I can't
23 know that unless I see, um, reports and
24 papers that document the activities of MHPC.
25 And so I'm asking for more information.

1
2 However, we [Coughing], however we have the
3 correct, you know, the right, um to expect
4 that as-as a Commission.

5 MR. CASSIDY: Well we did hear testimony
6 this morning of several projects. That we
7 were heard by several employees, uh...
8 throughout the year-what's this journal
9 called [unintelligible]. You know, I mean
10 there were a lot of different projects that
11 we were going to do that were done also
12 during the same year as [unintelligible] so I
13 mean I assume-I assumed that that testimony
14 was probably true and they had other things
15 going as well.

16 MS. THOMPSON: So Mike is saying... that
17 uh, if in another year there's another-two
18 years, there's another ballot question
19 regarding TABOR, and [unintelligible] back
20 then, it might give you more information as
21 to their primary purpose and so forth--

22 MR. FRIEDMAN: [i] Right and--

23 MS. THOMPSON: --let's say-that might-
24 that might help us. However, what if TABOR
25 had passed, so it's not going to come up

1
2 again. So... therefore we'd be stuck at making
3 a decision on this current year's activities.
4 We won't have an opportunity to move forward
5 with getting any more information on another
6 ballot--another TABOR ballot. You see what
7 I'm saying? The--

8 MR. FRIEDMAN: [i] No. I-I see what
9 you're saying. I-I certainly appreciate what
10 you're saying. Uh... you know, I'm looking at
11 the statute. The statute says major purpose,
12 it doesn't say limited to a campaign cycle
13 and... if the entity that we're dealing with is
14 MHPC which has a history that we've been able
15 to look at. Uh, they've been around for a
16 while. They weren't developed... in 2006, uh,
17 for the... purpose of doing TABOR, they've been
18 around for a while. We've seen the body of
19 their work and my instinct, again and I don't
20 want to belabor the point is that uh, while
21 TABOR was a significant issue for them. I
22 don't think it was their major... reason for
23 being. Significant issue in '06 but not
24 their major reason for existing. Which I
25 think is what is required--at least with my

1
2 interpretation of 1052.

3 MS. THOMPSON: So if they had declared
4 themselves a PAC, you might have disagreed
5 with their declaration.

6 MR. FRIEDMAN: Well. I mean if they
7 want to admit that they're a PAC, I'm never
8 going to disagree with that notion--

9 [laughter]

10 MS. THOMPSON: [i] But I'm--

11 MR. FRIEDMAN: --that's the easy way for
12 me to get out. But... it's a very, very
13 difficult question. But I don't--you know, I
14 don't think we ought to necessarily use this
15 one complaint to cast a broad brush, uh... in...
16 the greater sense of Maine politics, uh... I
17 think we have to limit ourselves to what... is
18 before us and that's the complaint. I guess.
19 This entity, uh, two files. Is it a PAC or
20 is it [Coughing] the 1056(b) filer. And I
21 think the only thing we disagree on is... that
22 you would like to have a little bit more
23 information. Uh, and personally I--I don't
24 think I need it. But other than that, we're
25 two of the most agreeable people you'd ever

1
2 see.

3 [Laughter]

4 HON. KETTERER: Well let me—let me help
5 move the situation along a little bit. Um... I
6 think the arguments are compelling, I think
7 the issues are complex. Um, and um, it's
8 hard to get—it's hard to build it right, it's
9 hard to get the [Coughing] mix right. Um,
10 I'm suggesting this may for future, uh,
11 conduct in terms of, uh, rulemaking, you
12 know, maybe that's something we should look
13 at it, in another meeting and um, the word
14 vague, you know, came up on a number of
15 different, uh, conversations and testimony
16 that we received. So... you know, but I think
17 we really have to deal with what's before us
18 right at the moment, um, and, uh... I think
19 where I am probably, uh, we'll just move it
20 along so that we can—we can have a vote on
21 it. I—I think I would probably be inclined,
22 uh, and it sounds like my—my two colleagues,
23 uh, to my left, uh are, you know, prepared to
24 make a decision right now, um, without any
25 further use of the subpoena. And frankly if

1
2 I were to support Commissioner Thompson's
3 point of view, um, it would appear to be, um,
4 and I'm presupposing how you might vote, from
5 what you said, I mean, uh... it's a fairly safe
6 bet, uh, you know, it would sort of be two to
7 two, um, I-I will say before we do vote, and
8 I have a suspicion that that may be how it
9 turns out, um... that I think, you know, that
10 the public transparency in government, uh, is
11 an important thing. Integrity in government
12 is an important thing. And people feeling
13 like they've been treated fairly, I think is
14 also important. Um, what I hear Commissioner
15 Thompson saying is it may end up the same
16 way, but I'd like more information before I
17 get there. It sound like what you're saying,
18 or we may end up with a different situation.
19 Where you'd like to use perhaps the subpoena
20 power to gather more information. Um, and
21 uh, I didn't start at that position but I
22 think I-I think you've convinced me to come
23 around to that and I, um... and my reasoning, I
24 think is simply that if you looked at more
25 information you might come to a different

1
2 result. If you don't look at the
3 information, you're never going to know
4 whether you're going to come to that result
5 or not. Uh, and I think that members of the
6 public might feel, gee they had an opportuni-
7 they-they had the lawful power to look
8 further and they just decided not to. Um and
9 I shouldn't say decided not to, decided there
10 wasn't any legal basis for going further,
11 which I think is a more accurate statement of
12 where you may be. Um, and I-I think it's a
13 close question but I probably would come down
14 on the side of saying, um, I-I don't see the
15 harm, any harm to the public in, uh, looking
16 further. And uh, using the further
17 investigative powers that-that we were given
18 by statute and by rulemaking. Um... and, um,
19 and there is-there could be a clear benefit
20 and one of the benefits even if we got to the
21 same result, which is it's not a PAC, um,
22 mem-members of the public would know that
23 this Commission has made a good faith effort
24 to investigate fully, get the information and
25 that we may come to the same conclusion that-

1
2 that--that sounds like we may come to today,
3 which is that there may be the required--
4 requirement of a filing under the provisions
5 of uh, 1056(b), but nothing further than
6 that. And from the testimony we've heard
7 from both sides, uh, I think we can
8 reasonably conclude that that's not going to
9 tell members of the public everything they
10 might like to know about that organization.
11 But notwithstanding that, I--I think that's
12 where--where I am right at the moment and uh,
13 working out--

14 MS. THOMPSON: [Interposing] I'd like to
15 make a motion.

16 HON. KETTERER: Okay. Make a motion.

17 MS. THOMPSON: Uh, I'll move--and I will
18 accept further amendments if it's seconded,
19 um, from dealing with the, uh, working, but
20 I'll move that the Commission use further
21 investigative, um... powers to subpoena
22 information... that staff and Commissioners
23 believe will help to clarify, um, "major
24 purpose" of MHPC during the year 2006.

25 HON. KETTERER: Any seconds to that

1
2 motion?

3 MR. FRIEDMAN: I'll second it, just for
4 a vote.

5 HON. KETTERER: Oh, okay. Um, any
6 further discussion on the--on the pending
7 motion, moved and seconded to, uh, uh, go
8 further with a--an inquiry including, um, use
9 of subpoenas if necessary. Um, uh, I don't
10 think there's any further discussion is
11 there, Vin?

12 MR. CASSIDY: No.

13 HON. KETTERER: Okay. Those in favor of
14 adopting the pending motion, pending in a
15 customary fashion. Thank you. Hands down.
16 Those opposed. Two--the vote is two to two.
17 The motion does not carry. Um, Mike you want
18 to make a motion?

19 MR. FRIEDMAN: Yeah I would make a
20 motion that... uh... based upon the evidence
21 presented to us both orally and in writing...
22 that... we determine that MHPC does not
23 constitute a PAC. I'm going to split the
24 motions.

25 MR. CASSIDY: I'll second.

[Laughter]

MR. FRIEDMAN: And we'll see where the vote goes.

MR. CASSIDY: And then I'll second the other motion--

MR. FRIEDMAN: [i] 'Cause you have to get to--I think through this one before you go to the next one.

MR. CASSIDY: I suppose.

HON. KETTERER: Uh, any discussion of the, uh, pending motion? I see none. Those in favor of adopting the pending motion? Those opposed? Uh, the vote is three to one and the pending motion is adopted.

MR. FRIEDMAN: Let me make a further, second motion that we find that, uh, uh, MHPC, uh... did... receive contributions and made expenditures aggregating in the amount of \$1,500 based upon the evidence that I heard regarding staff time and everything that Mr. Becker did, for the purpose of initiating, promoting, defeating or influencing in any way, uh, the TABOR ballot question, so that it would be required to file a 1056(b).

MR. CASSIDY: I second that.

HON. KETTERER: Moved and seconded to, uh, require the organization in question to file a 1056(b), with some reasonable period of time for filing since I think the deadline was yesterday. Uh, um, any discussion on the pending motion? Uh, having none, those in favor of adopting the pending motion kindly indicate. Those opposed. There are none. The vote is four to zero to require the organization to submit, um, Jonathan what would you think, like 14 days or so, uh, you have a... if their counsel was here I'd ask them, but I don't want to ask the client without the counsel because that can create [unintelligible] problems for him, but, um... do you think a longer period of time than that, to put together the--

[off mic]

MR. WAYNE: I think 14 days is sufficient.

HON. KETTERER: Would that take us until January 3rd? I think that would be--today's the 20th. Um, how about if we--how about if

1
2 we, uh, can we agree--yeah.

3 MR. CASSIDY: This question, since
4 there's two legal holidays in that particular
5 time should we extend it a little--maybe 21
6 days?

7 HON. KETTERER: Uh, yeah. I-I-I-the
8 deadline I think was yesterday, right, was
9 it, or?

10 MR. FRIEDMAN: Well uh, there was a
11 November 1st deadline.

12 HON. KETTERER: Yeah.

13 MR. FRIEDMAN: And then there's
14 yesterday's deadline.

15 HON. KETTERER: Okay. So--

16 MR. FRIEDMAN: [Interposing] So I mean
17 it would be, you know, uh...

18 MS. GARDINER: The end of the first week
19 in January would be [inaudible].

20 MR. CASSIDY: You know I assume they're
21 going to have to go back to the--

22 MR. FRIEDMAN: [i] No, I think we need
23 to give them enough time--

24 HON. KETTERER: Okay.

25 MR. FRIEDMAN: --to do the same kind of-

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2

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3

HON. KETTERER: [i] All right.

4

5

MR. FRIEDMAN: --diligent--I would
propose 30 days.

6

7

HON. KETTERER: Okay. Does that sound
fair? 30 days?

8

[Crosstalk, general agreement]

9

10

11

MR. CASSIDY: Because again, they've got
to research this apparently from what--the
testimony we heard.

12

13

HON. KETTERER: Okay. Well let--let's
resolve the 30 days first.

14

MS. THOMPSON: Sure.

15

16

17

18

19

20

21

22

HON. KETTERER: Okay. Yeah, uh, uh,
well I--I don't think 30 days has to be in the
motion, do you Phyllis, I mean that's just
sort of... adminste--administereal, uh, the
motion's been carried four to zero. And we
would direct that they file it within, um,
within 30 days of today's hearing date. Um...
okay. Um, your question.

23

24

25

MS. THOMPSON: Uh, I--I've raised this
issue with [unintelligible] Commissioners and
staff, um, and it has something to do with

1
2 our responsibility as Commission members and
3 also the fact that all of us are appointed by
4 elected representatives. Um, and so
5 therefore as a person appointed by an elected
6 representative, we are, to some extent,
7 representatives of the people as well. And
8 my sense is that it's appropriate for us to
9 respond... as necessary if the public or the
10 press ask us questions about the reasons for
11 clarification about our decisions and the way
12 we act in a public body. Now in the past
13 after coming to the Commissions I declined to
14 speak to the press because I was under the
15 impression that--that for whatever reason, if
16 a decision can be "appealed", to some
17 particular board, then therefore cannot talk
18 about it in a public fashion. But I also
19 feel and I'd like--I'm posing this to my
20 Commissioners to talk about this, I think
21 that we as representatives are duty bound to
22 explain publicly, our reasons for voting as
23 we do, and if in fact we are approached by a
24 citizen or approached by press, that we in
25 fact should be able to, or should be

1
2 responsible for clarifying our statement. I—
3 I need to get a sense from all of you because
4 it's my sense that the public would be
5 interested in our decisions today. And I
6 would like to know what you all think about
7 my question.

8 HON. KETTERER: Um, I'll be happy to,
9 uh, start the discussion off. Um... I think,
10 uh, comments by, uh, members who sit on a
11 quasi-judicial tribunal are governed either
12 by statute or by rulemaking, uh, whether
13 their comments to, uh, members of the media
14 or members of a law firm, and I go back to
15 the Office of—or whoever it is, the Office
16 of, uh, and uh, it can be fraught with danger
17 because there can be some subsequent appeal
18 by an aggrieved party. Uh, I—depending on
19 what we do. There could be two appeals, uh,
20 coming out of it. Uh, you know, uh, we
21 manage to make nobody happy, uh, and that
22 happens from time to time. But in any event,
23 um, and—and sometimes, uh, you know, that
24 higher tribunal under Rule 80 of the Maine
25 Rules of Civil Procedure, uh, you know,

1
2 decides that there's some fact that wasn't
3 found or something else, and it comes back to
4 us to determine a particular fact before a
5 decision can be made, or some other action is
6 taken by the superior court and it bounces
7 back to us to then do that. And we've
8 actually been in that situation. And I think
9 if we had made public comment, um, you know,
10 either to the media or just to other people
11 that you run the risk that if someone says I
12 think you should disqualify yourself because
13 you're already, uh, said how you feel and the
14 like. And I-I, you know, I-you can obviously
15 do whatever you want. I just think that we
16 all need to exercise caution and there is-is
17 it-Phyllis is it statute or?

18 MS. GARDINER: Well you actually have--
19 you actually have a rule--

20 HON. KETTERER: [i] Rule-rulemaking,
21 okay.

22 MS. GARDINER: Um... It's in Chapter One
23 of the Commission's Rules. Um...

24 HON. KETTERER: Maybe you should just
25 tell us what that says.

1
2 MS. GARDINER: Yeah. Commission members
3 shall not discuss any specific case under
4 investigation or any case which may
5 reasonable be expected to be the subject to
6 investigation as long as the matter is
7 pending before the Commission, and, where
8 applicable, until anybody to whom the
9 Commission renders an advisory opinion has
10 concluded action and any appeal that, um, has
11 been exhausted. One thing that's odd about
12 that wording is renders an advisory opinion.
13 That—I think you only do—well. You can do it
14 in response to inquiries. It's typically in
15 the context of a legislator [phonetic] asking
16 for an advisory opinion about some
17 [unintelligible] situation. Um, ironically
18 those are the things that are not appealable
19 whereas everything else we do do is--

20 HON. KETTERER: [i] Right. But there is
21 that wording--

22 MS. GARDINER: --it's our wording but I
23 would have to say... potentially [Banging
24 noise] I think it does reference something
25 that's specific investigation. It could be

1
2 that while something was still... um, before
3 you or within the period in which somebody
4 could appeal, it certainly is, um, that your
5 own rule clearly says you cannot communicate
6 [Coughing]. It may put you in an awkward
7 position but that's--

8 MS. THOMPSON: [Interposing] I-I want us
9 to all agree on whatever that--

10 HON. KETTERER: [Interposing] Well,
11 well--

12 MS. THOMPSON: --stipulation is.

13 [Crosstalk]

14 HON. KETTERER: That's rulemaking and it
15 does cover what we do here. I will say in
16 order to address your issue what I would, uh,
17 consider suggesting to you is, uh, we haven't
18 adjourned yet. If you want to put your
19 reasons for whatever your thinking is on the
20 record, you are free to do that now. There
21 are members of the media here. There's a
22 tape recording in case they're not here. And
23 if you--

24 MS. THOMPSON: [i] I'm fine-I'm fine
25 with-with-I mean we've already had our public

1
2 discussion. But I want to—I want to get a
3 sense from all of you, exactly what—Phyllis
4 the same. From my understanding is that if
5 we are approached by the press, we do not
6 talk about this particular issue, except
7 after what? If—if af—after what period of
8 time? 30 days? 90 days? I don't know what
9 appealable time is.

10 MS. GARDINER: Well it's um, 30 days
11 from when your decision is read. You voted
12 on your decision and when Jonathan writes
13 that up and we get that recorded, um, and you
14 know, in this case I think there may be,
15 certainly possible, I think that there would
16 be follow-up matters. You're—you're
17 directing this organization to file a report.
18 If there are any issues about that report,
19 that may keep some aspects of this alive, um,
20 so I'm not certain. I wouldn't want to tell
21 you that 30 days from today, uh, there's no--

22 HON. KETTERER: [Interposing] It doesn't
23 necessarily start the clock running--

24 [Crosstalk]

25 MS. THOMPSON: --that none of us is

1
2 going to be responding to questions from the
3 press is going to ask--may ask us on this
4 proceeding today, maybe not until--
5 [unintelligible], is that? I just want to
6 get a sense of being appropriate as a
7 Commissioner with you guys on--

8 HON. KETTERER: [i] I agree that rule is
9 requiring basically, um, no further
10 discussions outside the--the hearing room.
11 And I mean that's how I read it and that's
12 probably what I would do. And I may be wrong
13 about that. Uh, I've been wrong about lots
14 of other things.

15 MR. CASSIDY: Be--Phyll pointed out
16 though that--

17 HON. KETTERER: [i] Wait a moment. Vin
18 you want to say something?

19 MR. CASSIDY: Yeah. I just wondered--a
20 little bit you know, our--our--our discussions
21 and hearings are all public and [Skip in
22 audio] the press is here and I mean I never
23 have any problem saying what's on my mind and
24 I also know sometimes. But I think the--the
25 public has--has a complete understanding,

1
2 hopefully, how each one of us feel on all
3 these issues and I-I would be very reluctant
4 to comment on it afterwards or try to maybe
5 decide why did you do this thing or whatever.
6 And the other thing is I do remember a year
7 or so ago where we had a, uh, pending case,
8 and-and somebody made a comment and the
9 request was you shouldn't be one of us
10 because you talked to the press. So I think
11 it's very dangerous to do it. I think
12 everything is public, it's up front, we do
13 everything we could unless there was an
14 executive session which would have to meet
15 certain criteria, you know. Everything is
16 open to the public and I-I think that most of
17 them read that newspaper and--

18 HON. KETTERER: [i] I think the
19 foundation of the difference is looking at
20 the difference between, uh, something like a
21 legislative body, like a, uh, city council,
22 or uh, Maine House of Representatives or
23 Maine Senate. You can win or lose a vote and
24 walk right outside and hold a press
25 conference and nobody thinks anything's wrong

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2 with it. In fact it's actually kind of part
3 of your job. Um, and if you're on a judicial
4 or quasi-judicial tribunal, it's very
5 different and that's what this is. So,
6 that's my point.

7 MS. THOMPSON: So I appreciate the time
8 to discuss this.

9 HON. KETTERER: All right.

10 MS. THOMPSON: I wanted to clarify it.

11 HON. KETTERER: There's a reason why
12 that rule's in there. Um...

13 MR. FRIEDMAN: Um, I'm--let me just say.
14 I'm not entirely sure I agree with the rule.
15 I respect the rule. I don't necessarily
16 think we give up First Amendment rights by
17 agreeing to be on a quasi-judicial board, um,
18 but historically we're aimed at--we have not
19 commented on a specific issue that was before
20 us. But if we're called on general policy
21 matters, that's a different story. And I
22 think you can comment on general policy
23 matters the day after tomorrow, uh--

24 HON. KETTERER: [Interposing] I--I think
25 there's a big difference, right, because I

1 [Coughing] when we were--had... our budget set,
2 and then, um, a few years ago when the
3 legislature was running out of money, I think
4 they came in and grabbed about \$6,000,000 of
5 our money and said, we'll pay you later. And
6 then, uh, uh, Bill can appreciate this, uh,
7 and lo and behold they--and then they said
8 that a lot of the \$6,000,000 was gone and
9 people asked me from the media, what are you
10 going to do about it. Are you going to put a
11 bill in. You know, and I--and I talked freely
12 about the amount we had, the amount that was
13 taken out, kind of controversy--problems that
14 can create. When we said we were going to
15 fund candidates and then couldn't fund them
16 and they took a pledge not fund stuff.

17 [unintelligible] and it was fair game, but it
18 wasn't about opinion matters or was under
19 investigation. It was just, uh, my testimony
20 in support of a budget bill so I think that's
21 [unintelligible].

22 MS. THOMPSON: Yeah. And that's
23 [unintelligible].

24 HON. KETTERER: Yeah. And he was under
25

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2 investigation and I'm think-if there's
3 nothing further, uh--

4 MR. FRIEDMAN: [i] What shall we do?

5 MR. BRANSON: Mr. Chair? Can I make one
6 comment for purposes of preservation of my
7 right to appeal?

8 HON. KETTERER: Sure, go right ahead.

9 MR. BRANSON: I-I would just like to
10 say-and this relates to the question that Mr.
11 Friedman posed to me which is would I-would I
12 accept the 1056(b) report if that was the
13 only thing that we could get. I just want to
14 clarify and make very clear for the record,
15 in answering that question, I meant, is if we
16 went all the way up to the Maine Law Court,
17 and they decided that that was the best that
18 we could get... then under those circumstances
19 we would live with the 1056(b). I want to
20 make clear that I certainly was-where
21 Commissioner Thompson was, in voting against
22 having a 1056(b) report, because it's you
23 know, the vote was made without any
24 investigation having been conducted in this
25 case by the Commission. So, I just want to

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2 be clear for the record to preserve my right
3 to appeal. If it's this issue, and deciding
4 about whether to talk to the media, there's a
5 very high probability that we will pursue a
6 Rule AC [phonetic] appeal in Superior Court.

7 MR. FRIEDMAN: Let me just indicate to
8 you that this Commission did not make a
9 decision without an investigation. Perhaps
10 we didn't have the investigation that you
11 envisioned but we permitted you to-to uh,
12 present your argument for 90 minutes. We
13 presented the—we let the other side present
14 their arguments for 90 minutes. We permitted
15 you to file whatever you wanted to in terms
16 of documents. We permitted the other side to
17 file. We permitted you to rebut, uh, we—we
18 had a staff investigation. We had an
19 investigation. It may not be the one that
20 you wanted, but we had one.

21 MR. CASSIDY: I'd like to clarify
22 something else.

23 HON. KETTERER: You certainly could.
24 This is the moment of clarification--

25 MR. CASSIDY: [i] Well I don't know--

Commissioner Thompson voted against the 1056
did you?

MR. FRIEDMAN: No she didn't
[inaudible].

MR. CASSIDY: You didn't vote--

MS. THOMPSON: [Interposing] I voted--I
wanted to subpoena--I wanted materials to be
subpoenaed--

MR. CASSIDY: [Interposing] Yeah but
then you did vote--

MS. THOMPSON: --that failed so I voted
against saying that it is not a Political
Action Committee, I voted against that, that
failed three to one.

MR. CASSIDY: Right.

MS. THOMPSON: Then I voted in support
of the 1056(b)--

MR. CASSIDY: [i] Absolutely.

MS. THOMPSON: [i] Certainly as--

MR. CASSIDY: [i] Yeah. 'Cause you
know, he said that you voted against--

[Crosstalk]

MR. BRANSON: I--I missed that. That was
also a [inaudible].

[Off mic]

MR. WAYNE: Mr. Chair, may I?

HON. KETTERER: Yes. You may.

MR. WAYNE: Uh, since one of the parties has declared that they're going to file--or are thinking or intending to file an AB--Rule AB proceeding, just in terms of the form of the determination, I just want to ask Phyllis, uh, if--uh, if--if I just outline the motions, you know, the--the determinations themselves that were made here today, is that sufficient for the written determination, or, uh, sometimes it can be hard after hearing, you know, three and a half hours of testimony, you know, to [Background noise] reasons of the Commission are clear, that led them to [Background noise] should I be adlibbing or, you know, do I interpret--

[Crosstalk]

MR. WAYNE: Am I allowed to fix the motions like that.

MS. GARDINER: Um.

JONATHAN WAYNE: Do I need confirmation from the committee in order to draft this

determination or do you think I have what I need right now.

MS. GARDINER: Um. I... think that it's always difficult to capture a sufficient [inaudible]. Do the Commission members have anything to add to clarify the basis of... either the first or the second part of your, uh, motion, to be able to [unintelligible] determination that the MHCP did not constitute a PAC, um... I think Mr. Friedman may have [unintelligible] very clear, um, that's [unintelligible] in support of his motion, um--

HON. KETTERER: [i] That's a good point Phyllis. Let me just put my thoughts on the record while I still have them. Uh, and that is, uh, on that-that motion, uh, my-the first motion, my feeling was, uh, retrieving additional information would be a good thing and it would-made-might add transparency which would be a good thing. Uh, my vote on the second motion, uh, where it was a three to one vote, where the pending motion was, uh, determined it was not a Political Action

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2 Committee, um... I don't know that I ever would
3 have reached that anyway but if--in order for
4 me to reach that I would have had to have
5 had... subpoenaed documents, so with the vote
6 that I could not obtain the subpoenaed
7 documents, uh, on the evidence presented, uh,
8 the cor--in my view, the correct vote was to
9 vote that it was not a Political Action
10 Committee 'cause there was not enough
11 evidence to support the conclusion that it is
12 without additional information. And on the
13 third vote, it's self-evident. What the vote
14 was, four to zero.

15 MR. CASSIDY: Yeah, and you know, to-to--
16 to also sort of clarify where I was coming
17 from, I felt that we've had three or four
18 hours of testimony. We heard each side, just
19 including my, uh, briefcase reams of
20 information that we received from both
21 parties and uh, you know, I--I just felt that
22 the testimony we heard and the evidence we
23 saw was sufficient enough to make a decision
24 on that. And then obviously, uh, as the
25 Chairman mentioned, uh, the last motion was

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2 that they need to report, so that's where I
3 came from, from those two votes as well. And
4 also on the first one, didn't feel that we
5 needed, uh, you know to subpoena more
6 information. I think we had [unintelligible]
7 information.

8 MS. THOMPSON: So do you really--you need
9 an explanation of our votes, is that what
10 you're looking for-- ?

11 MR. WAYNE: It's just that, uh--

12 PHYLLIS GARDINER: --[unintelligible]
13 Whatever, um, I mean my understanding of
14 what--that's your--your vote. Find that MHPC
15 is not a PAC, um, was based, on a finding
16 that the major purpose [Background noise] and
17 the evidence that you had before you today.
18 Um, and without the major purposes of the
19 organization, is to, uh, promote--

20 MS. GARDINER: [i] Okay how--

21 MS. THOMPSON: --[unintelligible]. You
22 need clarification then. Are you--and you
23 think clarification's involved? Shall I?

24 MS. GARDINER: I think the--well the--the
25 vote that carries is the most important, but

anybody should feel free to offer--

MS. THOMPSON: [i] Okay. Well--

MS. GARDINER: --I mean it's got to be the basis of the Commission's finding is that the majority voted to find... that MHPC--

MS. THOMPSON: [i] Okay my answer--

MS. GARDINER: --did not constitute a PAC. So the question is, is that, I'm just asking [unintelligible], um, are Jon and I correct in understanding that your basis for that finding is... [long unintelligible].

MS. THOMPSON: You want me to say--

[Crosstalk]

MS. THOMPSON: --I voted against saying it is not a PAC because it was very clear to me that it may very well be a PAC. And that is why I voted against that motion and have asked for more clarifying information be brought before us.

MS. GARDINER: Um-hum.

MS. THOMPSON: Okay.

MR. CASSIDY: Yeah. I would make a motion to adjourn. I don't know if this is a...

[Crosstalk]

HON. KETTERER: It's now 10 after, but
it's going to pass the 20th.

MR. CASSIDY: Are you going to debate on
the motion to adjourn, by the way?

HON. KETTERER: There is not—
[unintelligible], is that right? That's it.
All right. Thank you everyone.

[Background noise as Commissioners
leave]

[END OF HEARING]

C E R T I F I C A T E

I, Laura L. Springate certify that the foregoing transcript of proceedings the Maine Ethics Commission, Docket No. - - was prepared using standard electronic transcription equipment and is a true and accurate record of the proceedings.

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